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Rules and Regulations

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DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 91-NM-229-AD; Amdt. 39-8111; AD 91-25-10]

Airworthiness Directives; McDonnell Douglas Model DC-10-10 Series Airplanes

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: This amendment adopts a new airworthiness directive (AD), applicable to certain McDonnell Douglas Model DC-10-10 series airplanes, which requires visual inspection for cracks of the forward lower pressure bulkhead, and repair, if necessary. This amendment is prompted by an incident of rapid decompression which was caused by failure of the forward lower pressure bulkhead. This condition, if not corrected, could result in rapid decompression of the airplane.

DATES: December 27, 1991.

The incorporation by reference of certain publications listed in the regulations is approved by the Director of the Federal Register as of December 27, 1991.

ADDRESSES: The applicable service information may be obtained from McDonnell Douglas Corporation, Technical Publications-Technical Administrative Support, C1-L5B, 3855 Lakewood Boulevard, Long Beach, California 90846. This information may be examined at the FAA, Northwest Mountain Region, Transport Airplane Directorate, 1601 Lind Avenue SW., Renton, Washington; or at the Los Angeles Aircraft Certification Office, 3229 East Spring Street, Long Beach, California; or at the Office of the Federal Register, 1100 L Street NW., Room 8401, Washington, DC.

FOR FURTHER INFORMATION CONTACT: Ms. Dorenda D. Baker, Aerospace Engineer, or Ms. Maureen Moreland, Aerospace Engineer, Airframe Branch, ANM-121L, FAA, Northwest Mountain Region, Los Angeles Aircraft Certification Office, 3229 East Spring Street, Long Beach, California 90806-2425; telephone (213) 988-5231.

SUPPLEMENTARY INFORMATION: One operator recently experienced rapid decompression as a result to fatigue cracking, leading to failure, of the forward lower pressure bulkhead on a McDonnell Douglas Model DC-10-10 series airplane. The forward lower pressure bulkhead is located at the aft end of the center accessory compartment, forward of the main wing spar at Fuselage Station Y=1156.00. Failure of this bulkhead could result in rapid decompression of the airplane.

The FAA has reviewed and approved McDonnell Douglas Service Bulletins 53-102, dated August 15, 1977, and 53-104, dated July 28, 1978, which describe procedures for repair of the forward lower pressure bulkhead. The repair involves the installation of doublers in the forward lower pressure bulkhead to reinforce the area.

Since this situation is likely to exist or develop on other airplanes of the same type design, this AD requires repetitive visual inspections to detect cracking in the aft side of the web area on the right-hand side of the bulkhead, and in the aft or forward side of the web area on the left-hand side of the bulkhead. Any cracking discovered during these inspections is required to be repaired in accordance with the service bulletin previously described. The AD also provides for the optional installation of doublers in the forward lower pressure bulkhead as terminating action for the repetitive inspections.

Since a situation exists that requires immediate adoption of this regulation, it is found that notice and public procedure hereon are impracticable, and good cause exists for making this amendment effective in less than 30 days.

This is considered to be interim action until final action is identified, at which time the FAA may consider further rulemaking to address it.

The regulations adopted herein will not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, in accordance with Executive Order 12612, it is determined that this final rule does not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

The FAA has determined that this regulation is an emergency regulation and that it is not considered to be major under Executive Order 12291. It is impracticable for the agency to follow the procedures of Order 12291 with respect to this rule since the rule must be issued immediately to correct an unsafe condition in aircraft. It has been determined further that this action involves an emergency regulation under DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979). If it is determined that this emergency regulation otherwise would be significant under DOT Regulatory Policies and Procedures, a final regulatory evaluation will be prepared and placed in the Rules Docket. A copy of it, if filed, may be obtained from the Rules Docket.

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Incorporation by reference, Safety.

Adoption of the Amendment

Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration amends 14 CFR part 39 of the Federal Aviation Regulations as follows:

PART 39—[AMENDED]

1. The authority citation for part 39 continues to read as follows:

Authority: 49 U.S.C. 1354(a), 1421 and 1423; 49 U.S.C. 106(g); 14 CFR 11.89.

§ 39.13 [Amended]

2. Section 39.13 is amended by adding the following new airworthiness directive:

91-25-10. **McDonnell Douglas:** Amendment 39-8111. Docket No. 91-229-AD.

Applicability: Model DC-10-10 series airplanes, certificated in any category.

Compliance: Required as indicated, unless previously accomplished.

To prevent failure of the forward lower pressure bulkhead and consequent rapid decompression of the airplane, accomplish the following:

(a) Within 40 landings or 10 days after the effective date of this AD, whichever occurs earlier, unless previously accomplished within the last 210 landings, conduct a visual inspection of the forward lower pressure bulkhead at Fuselage Station Y=1156 as described in paragraphs (a)(1) and (a)(2) of this AD, as applicable. Repeat the visual inspections of the bulkhead thereafter at intervals not to exceed 250 landings.

(1) For Model DC-10-10 series airplanes, fuselage numbers 1 through 27, 30 through 43, 45 through 80, 83 through 86, 89 through 107, and 112 through 272, on which doublers have not been installed in accordance with McDonnell Douglas DC-10 Service Bulletin 53-104, dated July 28, 1978 (hereinafter referred to as "53-104"), accomplish the following: Clean and, under intense concentrated lighting, visually inspect the aft side of the web area on the right-hand side of the bulkhead between longerons 39 and 43, from the bulkhead tee cap up to the wing front spar.

(2) For Model DC-10-10 series airplanes, fuselage numbers 1 through 27, and 30 through 222, on which doublers have not been installed in accordance with McDonnell Douglas DC-10 Service Bulletin 53-102, dated August 15, 1977 (hereinafter referred to as "53-102"), accomplish the following: Clean and, under intense concentrated lighting, visually inspect either the aft or forward side of the web area on the left-hand side of the bulkhead between longerons 39 and 43, from the bulkhead tee cap up to the wing front spar.

(b) If cracks are found as a result of the inspections conducted in accordance with this AD, prior to further flight, repair in accordance with 53-102 or 53-104, as applicable.

(c) Installation of the doublers on the forward lower pressure bulkhead in accordance with 53-102 and 53-104 constitutes terminating action for the inspections required by this AD.

(d) An alternative method of compliance or adjustment of the compliance time, which provides an acceptable level of safety, may be used when approved by the Manager, Los Angeles Aircraft Certification Office (ACO), FAA, Transport Airplane Directorate. The request shall be forwarded through an FAA principal Maintenance Inspector (PMI), who may concur or comment and then send it to the Manager, Los Angeles ACO.

(e) Special flight permits may be issued in accordance with FAR 21.197 and 21.199 to operate airplanes unpressurized to a base in order to comply with the inspection requirements of this AD.

(f) The repair requirements shall be accomplished in accordance with McDonnell Douglas DC10 Service Bulletin 53-102, dated August 15, 1977; and McDonnell Douglas DC-10 Service Bulletin 53-104, dated July 28, 1978.

This incorporation by reference was approved by the Director of the Federal Register in accordance with 5 U.S.C. 552(a) and 1 CFR part 51. Copies may be obtained from McDonnell Douglas Corporation, Technical Publications-Technical Administrative Support, C1-L5B, 3855 Lakewood Boulevard, Long Beach, California 90846. Copies may be inspected at the FAA, Northwest Mountain Region, Transport Airplane Directorate, 1601 Lind Avenue SW., Renton, Washington; or at the Los Angeles Aircraft Certification Office, 3229 East Spring Street, Long Beach, California; or at the Office of the Federal Register, 1100 L Street NW., room 8401, Washington DC.

(g) This amendment (39-8111), AD 91-25-10, becomes effective on December 27, 1991.

Issued in Renton, Washington, on November 21, 1991.

Darrell M. Pederson,

Acting Manger, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 91-29644 Filed 12-11-91; 8:45 am]

BILLING CODE 4910-13-M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

21 CFR Part 558

Animal Drugs, Feeds, and Related Products; Change of Sponsor

AGENCY: Food and Drug Administration, HHS.

ACTION: Final rule.

SUMMARY: The Food and Drug Administration (FDA) is amending the animal drug regulations to reflect a change of sponsor for two new animal drug applications (NADA's) from Fermenta Animal Health Co. to A.L. Laboratories, Inc.

EFFECTIVE DATE: December 12, 1991.

FOR FURTHER INFORMATION CONTACT: Benjamin Puyot, Center for Veterinary Medicine (HFV-130), Food and Drug Administration, 7500 Standish Pl., Rockville, MD 20855, 301-295-8646.

SUPPLEMENTARY INFORMATION: Fermenta Animal Health Co., 10150 North Executive Hills Blvd., P.O. Box 901350, Kansas City, MO 64190-1350, has informed FDA that it has transferred ownership of, and all rights and interests in, NADA's 046-699 and 065-020 to A.L. Laboratories, Inc., One Executive Dr., P.O. Box 1399, Fort Lee, NJ 07024. Both NADA's are for chlortetracycline.

The agency is amending the regulations in 21 CFR 558.15 (g)(1) and (g)(2) to reflect the change of sponsor.

List of Subjects in 21 CFR Part 558

Animal drugs, Animal feeds.

Therefore, under the Federal Food, Drug, and Cosmetic Act and under authority delegated to the Commissioner of Food and Drugs and redelegated to the Center for Veterinary Medicine, 21 CFR part 558 is amended as follows:

PART 558—NEW ANIMAL DRUGS FOR USE IN ANIMAL FEEDS

1. The authority citation for 21 CFR part 558 continues to read as follows:

Authority: Secs. 512, 701 of the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 360b, 371).

§ 558.15 [Amended]

2. Section 558.15 Antibiotic, nitrofuran, and sulfonamide drugs in the feed of animals is amended in the tables in paragraphs (g)(1) and (g)(2) under the "Drug sponsor" heading by removing the entry for "Fermenta Animal Health Co." and inserting in its place "A.L. Laboratories, Inc."

Dated: December 3, 1991.

Robert C. Livingston,

Director, Office of New Animal Drug Evaluation, Center for Veterinary Medicine.

[FR Doc. 91-29678 Filed 12-11-91; 8:45 am]

BILLING CODE 4160-01-M

DEPARTMENT OF EDUCATION

RIN 1840-AB32

34 CFR Part 682

Guaranteed Student Loan and PLUS Programs

AGENCY: Department of Education.

ACTION: Final regulations.

SUMMARY: The Secretary amends 34 CFR part 682 to add the Office of Management and Budget (OMB) control number to a section of the regulations. This section contains information collection requirements approved by OMB. The Secretary takes this action to inform the public that these requirements have been approved.

EFFECTIVE DATE: These regulations are effective on December 12, 1991.

FOR FURTHER INFORMATION CONTACT: Doug Laine or Pat Newcombe, Guaranteed Student Loan Branch, Division of Policy and Program Development, U.S. Department of Education, 400 Maryland Avenue, SW. (room 4310, ROB-3), Washington, DC, 20202. Telephone Number (202) 708-8242. Deaf and hearing impaired individuals may call the Federal Dual Party Relay Service at 1-800-877-8339 (in Washington, DC 202 area code, telephone 708-9300) between 8 a.m. and 7 p.m. Eastern time.

SUPPLEMENTARY INFORMATION: On September 26, 1991, final regulations for the Guaranteed Student Loan and PLUS Programs were published in the **Federal Register** at 56 FR 48990. The effective date of a section of these regulations was delayed until information collection requirements contained in that section were approved by OMB under the Paperwork Reduction Act of 1980, as amended. OMB has approved the information collection requirements, and that section of the regulations is now effective.

Waiver of Proposed Rulemaking

In accordance with section 431(b)(2)(A) of the General Education Provisions Act (20 U.S.C. 1232(b)(2)(A)) and the Administrative Procedure Act (5 U.S.C. 553), it is the practice of the Secretary to offer interested parties the opportunity to comment on proposed regulations. However, the publication of OMB control numbers is purely technical and does not establish substantive policy. Therefore, the Secretary has determined under 5 U.S.C. 553(b)(B) that proposed rulemaking is unnecessary and contrary to the public interest and that a delayed effective date is not required under 5 U.S.C. 553(d)(3).

List of Subjects in 34 CFR Part 682

Administrative practice and procedure, Colleges and universities, Consumer protection, Education, Grant programs—education, Reporting and recordkeeping requirements, Student aid.

Dated: December 6, 1991.

Lamar Alexander,

Secretary of Education.

The Secretary amends part 682 of title 34 of the Code of Federal Regulations as follows:

PART 682—GUARANTEED STUDENT LOAN AND PLUS PROGRAMS

1. The authority citation for part 682 continues to read as follows:

Authority: 20 U.S.C. 1071 to 1087–2, unless otherwise noted.

2. The parenthetical statement following § 682.208 is revised to read as follows:

* * * * *

(Approved by the Office of Management and Budget under control number 1840–0538).

[FR Doc. 91–29669 Filed 12–11–91; 8:45 am]

BILLING CODE 4000–01–M

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[NH3–2–5374 A–1–FRL–4033–9]

Approval and Promulgation of Air Quality Implementation Plans; New Hampshire; Withdrawal of Source-Specific Operating Permits

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: EPA is approving a State Implementation Plan (SIP) revision submitted by the State of New Hampshire. This revision withdraws nine source-specific operating permits from the SIP. The intended effect of this action is to approve the withdrawal of the nine source-specific operating permits from the New Hampshire SIP. This action is being taken in accordance with section 110 and Part D of the Clean Air Act.

EFFECTIVE DATE: This rule will become effective on January 13, 1992.

ADDRESSES: Copies of the documents relevant to this action are available for public inspection during normal business hours, by appointment at the Air, Pesticides and Toxics Management Division, U.S. Environmental Protection Agency, Region I, One Congress Street, 10th floor, Boston, MA; Public Information Reference Unit, U.S. Environmental Protection Agency, 401 M Street, SW., Washington, DC 20460; and New Hampshire Air Resources Division, Department of Environmental Services, 64 North Main Street, Caller Box 2033, Concord, NH 03302–2033.

FOR FURTHER INFORMATION CONTACT: Patricia C. Kelling, (617) 565–3249; FTS 835–3249.

SUPPLEMENTARY INFORMATION: On September 12, 1990, the New Hampshire Air Resources Division (NHARD) submitted a revision to its SIP asking for the withdrawal of previous SIP revisions consisting of source-specific operating permits issued by the NHARD to the nine facilities listed below:

1. ATC Petroleum, Inc., Newington, NH.
2. Mobil Oil Corporation, Newington, NH.
3. Nashua Corporation, Merrimack, NH.
4. Oak Materials Group, Franklin, NH.
5. Nashua Corporation, Nashua, NH.
6. Velcro U.S.A., Manchester, NH.
7. Markem Corporation, Keene, NH.
8. Ideal Tape Corporation, Exeter, NH.
9. Essex Group, Newmarket, NH.

On May 25, 1988, EPA sent a letter to John H. Sununu, Governor of New Hampshire, pursuant to section 110(a)(2)(H) of the Clean Air Act (CAA) as amended notifying him that the New Hampshire SIP was substantially inadequate to achieve the National Ambient Air Quality Standard (NAAQS) for ozone in the New Hampshire portion of the Boston-Lawrence-Salem Consolidated Metropolitan Statistical Area (CMSA), and in the New Hampshire portion of the Portsmouth-Dover-Rochester Metropolitan Statistical Area (MSA) plus the remaining portion of Strafford County. On November 8, 1989, EPA sent a letter to Judd Gregg, Governor of New Hampshire, pursuant to section 110(a)(2)(H) of the CAA as amended notifying him that the New Hampshire SIP was substantially inadequate to achieve the NAAQS for ozone in the Manchester MSA plus the remaining portion of Merrimack County and the remaining portions of Hillsboro and Rockingham Counties outside of the Boston-Lawrence-Salem CMSA. EPA requested that the State respond to the SIP calls in two phases—the first in the near future and the second following EPA's issuance of a final policy on how the States should correct their SIPs.

On June 16, 1988, EPA sent a letter to the NHARD indicating the actions which were necessary in order to adequately respond to the SIP call. These actions included amendments to New Hampshire's volatile organic compound (VOC) reasonably available control technology (RACT) regulations and revisions to nine source-specific operating permits issued to VOC-emitting facilities and incorporated by reference into New Hampshire's SIP.

In that letter, EPA stated its position that an adequate response to the SIP call required New Hampshire to ensure that the nine facilities are subjected to all of the applicable control requirements contained in EPA's control technique guidelines (CTGs) and other guidance by either amending the source-specific operating permits, or requiring these sources to be subject to the corrected version of the regulations in the Rule Governing the Control of Air Pollution for the State of New Hampshire PART Env–A 1204, entitled "Volatile Organic Compounds," by withdrawing the nine operating permits from the SIP.

New Hampshire revised its VOC regulations in PART Env–A 1204 and adopted them on November 15, 1989, becoming effective on November 16, 1989. The revised regulations were proposed for approval by EPA on June 13, 1990 (55 FR 23950) and were finally approved by EPA as a SIP revision on June 13, 1991 (56 FR 27197).

New Hampshire submitted a letter to EPA on September 12, 1990 asking EPA to withdraw the nine source-specific operating permits from the SIP in order to satisfy the NHARD's obligation under EPA's May 25, 1988 and November 8, 1989 SIP call letters. On June 20, 1991, the NHARD held a public hearing completing the SIP submittal process.

This action addresses one of the two deficiencies listed in EPA's letter sent to Judd Gregg, Governor of New Hampshire, on June 11, 1991. This letter informed the State that New Hampshire failed to make a required submittal under section 182(a)(2)(A) of the Clean Air Act Amendments of 1990 for the deficiencies in the State's VOC regulations.

On September 13, 1991 (56 FR 46590), EPA published a notice of proposed rulemaking (NPR) for this formal revision to the SIP. EPA did not receive any public comments.

Final Action

EPA is approving the withdrawal from the New Hampshire SIP of the nine source-specific operating permits incorporated by reference at 40 CFR 52.1520(c)(21), (c)(25) and (c)(32) as revisions to the New Hampshire SIP.

This action has been classified as a Table 3 action by the Regional Administrator under the procedures published in the **Federal Register** on January 19, 1989 (54 FR 2214–2225).

The Office of Management and Budget has exempted this rule from the requirements of section 3 of Executive Order 12291.

Nothing in this action should be construed as permitting or allowing or establishing a precedent for any future request for revision to any State implementation plan. Each request for revision to the State implementation plan shall be considered separately in light of specific technical, economic, and environmental factors and in relation to relevant statutory and regulatory requirements.

EPA has reviewed the SIP revision for conformance with the provisions of the 1990 Clean Air Act Amendments enacted on November 15, 1990. Although New Hampshire submitted this SIP revision prior to November 15, 1990, EPA has determined that this action is approvable. The revision may not include all of the new title I requirements, however, it strengthens the requirements in New Hampshire's existing SIP and conforms to all of EPA's current regulations. Furthermore, many of the provisions of the new law do not require state submittals until some time in the future. EPA is currently developing guidance for the States for title I and New Hampshire will adopt regulations meeting these new requirements and submit them in a separate submittal. EPA has decided to approve this revision today in order to strengthen the SIP and conform it to existing requirements during this transition period.

Under section 307(b) of the Clean Air Act, petitions for judicial review of this action must be filed in the United States Court of Appeals for the appropriate circuit by (60 days from date of publication). Filing a petition for reconsideration by the Administrator of this final rule does not affect the finality of this rule for the purposes of judicial review nor does it extend the time within which a petition for judicial review may be filed, and shall not postpone the effectiveness of such rule or action. This action may not be challenged later in proceedings to enforce its requirements. (See section 307(b)(2).)

List of Subjects in 40 CFR Part 52

Air pollution control, Hydrocarbons, Incorporation by reference, Ozone.

Note: Incorporation by reference of the State Implementation Plan for the State of New Hampshire was approved by the Director of the **Federal Register** on July 1, 1982.

Dated: November 13, 1991.

Julie Belaga,

Regional Administrator, Region I.

Part 52 of chapter I, title 40 of the Code of Federal Regulations is amended as follows:

PART 52—[AMENDED]

1. The authority citation for part 52 continues to read as follows:

Authority: 42 U.S.C. 7401–7642.

2. Section 52.1520 is amended by adding paragraph (c)(44) to read as follows:

§ 52.1520 Identification of plan

* * * * *

(c) * * *

(44) Revisions to the State Implementation Plan submitted by the New Hampshire Air Resources Division on September 12, 1990.

(i) Incorporation by reference.

Letter from the New Hampshire Air Resources Division dated September 12, 1990 submitting a revision to the New Hampshire State Implementation Plan that withdraws nine source-specific operating permits incorporated by reference at 40 CFR 52.1520(c)(21), (c)(25) and (c)(32).

(ii) Additional Materials.

Letter from the New Hampshire Air Resources Division dated July 2, 1991 submitting documentation of a public hearing.

[FR Doc. 91–29636 Filed 12–11–91; 8:45 am]

BILLING CODE 6560–50–M

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40 CFR Parts 80 and 86

[AMS–FRL–4030–7]

Regulation of Fuels and Fuel Additives: Standards for Gasoline Volatility; and Control of Air Pollution From New Motor Vehicles and New Motor Vehicle Engines: Standards for Particulate Emissions From Urban Buses

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: The regulatory changes announced in this final rule are as follows: (a) A particulate emission standard of 0.25 gram per brake horsepower-hour (g/BHP-hr) for 1991 and 1992 model year urban buses and accompanying required changes to the urban bus noncompliance penalties, and (b) modification of existing regulations restricting the volatility of summertime gasoline. This rule revises the maximum allowable Reid Vapor Pressure (RVP) for gasoline from 7.8 to 9.0 pounds per square inch (psi) in those areas which are designated as unclassifiable or in attainment with the National Ambient Air Quality Standard (NAAQS) for ozone. The state-by-state RVP standards in EPA's current regulations, scheduled to take effect in the summer of 1992 (55 FR 23658, June 11, 1990), are revised by this final rule such that RVP limits below 9.0 psi will go into effect for nonattainment areas only. Both the urban bus and gasoline volatility provisions will conform current EPA regulations with the requirements of the Clean Air Act, as amended by the Clean Air Act Amendments of 1990 (CAA).

DATES: This Final Rule is effective on January 13, 1992.

The incorporation by reference of ASTM E29–67 is effective on January 13, 1992.

ADDRESSES: Materials relevant to this final rule are contained in Public Docket No. A–91–06, located at Room M–1500, Waterside Mall (ground floor), U.S. Environmental Protection Agency, 401 M Street SW., Washington, DC 20460. Relevant materials may also be found in the dockets for the regulations which this rulemaking amends: Public Docket No. A–85–21, established in support of

the previous volatility rulemakings; Public Docket No. A–84–07, established in support of the previous heavy-duty exhaust standards; and Public Docket EN–87–02, established in support of the previous heavyduty nonconformance penalty rulemaking. Each of these dockets may be found at the above address. The dockets may be inspected from 8 a.m. until 12 noon and from 1:30 p.m. until 3 p.m. Monday through Friday. Under 40 CFR part 2, a reasonable fee may be charged by EPA for copying docket materials.

FOR FURTHER INFORMATION CONTACT: Joanne I. Goldhand, U.S. EPA (SDSB–12), Emission Control Technology Division, 2565 Plymouth Road, Ann Arbor, MI 48105, Telephone: (313) 668–4504.

SUPPLEMENTARY INFORMATION: .

I. Background

The regulatory changes being finalized today were proposed on May 29, 1991 in the **Federal Register** (56 FR 24242). Broadly speaking, EPA proposed to raise the 1991 and 1992 urban bus particulate standard to 0.25 g/BHP-hr and to change the urban bus nonconformance penalties as required by the revised standard. EPA also proposed to change the summertime volatility standard for gasoline in attainment areas to 9.0 psi RVP in areas where it was not at that level and to change the ethanol RVP allowance to conform to the Clean Air Act. (for further details, refer to Section II of this notice).

EPA held a public hearing on these changes on June 17, 1991 at the Motor Vehicle Emission Laboratory in Ann Arbor, Michigan. Public comments were accepted at that time and for thirty days thereafter, until July 17, 1991 as described in the NPRM. Comments were submitted by: Mid-Atlantic Regional Council, Department of Agriculture, American Petroleum Institute (API), Missouri Department of Natural Resources, Kansas City-Wyandotte County Department of Health, American Public Transit Association (APTA), The Flexible Corporation, Renewable Fuels Association (RFA), Kansas Department of Health and Environment, Kerr-McGee Corp., Petroleum Marketers Association of America (PMAA), the National Council of Farmer Cooperatives and the National Highway Traffic Safety Administration. Interested readers are referred to the docket for this rulemaking for the transcript of the hearing and copies of all written comments.

II. Summary and Analysis of Comments

A. Safety

The National Highway Traffic Safety Administration (NHTSA) expressed concern that allowing the sale of 9.0 psi RVP gasoline (rather than 7.8 psi pursuant to the earlier regulations) in attainment areas could lead to increased safety problems. NHTSA claimed that "according to GM, for automobile manufacturers to meet [the upcoming enhanced evaporative emissions] requirements, lower volatility gasoline, as originally required, is necessary." [1] NHTSA implied that excess vapor emission would create a safety issue.

In response to NHTSA's concerns, EPA notes first that the change in the Phase II RVP level for attainment areas to 9.0 psi is required by the statute, and that the Agency is constrained to implement this mandate. In addition, no manufacturer or other person raised safety concerns with the proposal. The volatility of gasoline will still be reduced from its pre-1992 levels, so there will be no increase in vapor formation compared to current levels. Finally, EPA is currently conducting a rulemaking with respect to motor vehicle evaporative emission requirements. Any safety concerns regarding these motor vehicle emission control requirements are more properly directed to that rulemaking.

B. Ethanol Blends, Pump Labeling

Under the current regulations, certain pump labeling and document statement requirements are conditions for a one psi allowance for ethanol blends. However, since section 211(h) provides for a one psi allowance for ethanol blends without labeling and document statement requirements, EPA believes that it is inappropriate to retain them as conditions of the one psi allowance. Accordingly, EPA proposed revisions which would treat the requirements as conditions for sale of such gasoline rather than as conditions of the one psi allowance. The proposed revisions would require the pump label to state that the gasoline dispensed from the pump contains ethanol and the percentage concentration of ethanol. EPA proposed to retain the pump label requirement as a condition of sale because it believed that pump labeling would aid enforcement since the fuel samples for testing are taken from the pump. Pump labeling is also a way of informing the handlers of the fuel that the fuel contains ethanol so that inadvertent blending of ethanol products with non-ethanol products may be avoided.

The Renewable Fuels Association (RFA) requested that EPA remove the requirement for ethanol labeling on pumps. RFA argued that pump labeling is not required for enforcement purposes since there are alternatives to pump labeling which would achieve EPA's regulatory objectives. RFA further argued that the labeling is discriminatory against ethanol products since there is no labeling requirement with respect to other oxygenates used as fuel additives. Finally RFA claimed that the requirement may aid "anti-ethanol interests." RFA argued that, in the past, several companies have run "no alcohol" advertising campaigns which have included gasoline pump labeling. RFA is concerned that EPA's proposed pump labeling provision could allow further abuses in this area.[2]

EPA has reconsidered its pump labeling proposal. EPA agrees that pump labeling, although helpful for screening purposes, is not essential for enforcement. It is EPA's current practice to routinely test any fuel that exceeds the standard by one psi or less for ethanol content. This testing identifies those fuels which would otherwise be out of compliance but which qualify for the one psi allowance. Additionally, the documentation requirement, which RFA did not challenge and which remains in place, will inform most handlers of the fuel of its ethanol content so that improper commingling of products will be avoided. While EPA does not find EPA's arguments regarding marketing abuses to be convincing, the Agency has not included a labeling requirement for ethanol blends in these final regulations for the above reasons.

C. Ethanol Blends, One psi Allowance

The RFA has also argued that the one psi allowance should be given to ethanol blends which contain enough ethanol to meet the reformulated or oxygenated fuel requirements, even if they contain less than 9% ethanol. RFA claims that limiting the tolerance to 9–10 percent blends will hamper the commercial viability of ethanol blends to meet the reformulated and oxygenated fuels requirements without providing any discernable air quality or enforcement

[1] Letter from Barry Felrice, Associate Administrator for Rulemaking of the National Highway Traffic Safety Administration, to Richard D. Wilson, Director of the Office of Mobile Sources of the Environmental Protection Agency, dated May 10, 1991 (Item II–F–4 in the Docket).

[2] Comment of the Renewable Fuels Association Regarding EPA's Notice of Proposed Rulemaking, "Modification of Existing Regulations Restricting the Volatility for Summertime Gasoline," submitted July 17, 1991 (Docket No. A–91–06, item IV–D–08).

advantage. RFA relies on EPA actions in Phoenix and argues that Congress did not intend to preclude the use of ethanol for reformulated or oxygenated gasoline when it revised the volatility regulations. EPA believes the statute clearly prohibits such an application of the allowance. As described in the proposal, EPA interprets the statute as requiring at least 9 percent ethanol to be eligible for the allowance. Section 211(h) does not allow this requirement to be waived or adjusted in any way based on section 211(k) (reformulated gasoline) or section 211(m) (oxygenated gasoline). EPA further believes that RFA's reliance on the Phoenix action is misplaced since that action involved a program combining wintertime RVP and oxygenated gasoline requirements to meet a CO nonattainment problem in one specific locale.

D. Ethanol Blends, Certification Defense

Another commenter, the Petroleum Marketers Association of America ("PMAA"), agreed with EPA's proposal to add a defense against liability for ethanol blends when a certificate of compliance was received from the supplier. However, PMAA suggested the imposition of a requirement that all refiners produce certificates regarding compliance with applicable RVP standards. PMAA claimed failure to impose this requirement could lead to circumvention of the CAA's requirement that this new defense be created. PMAA claims there is no burden created as "it is already a common practice for many refiners to do so * * * when the RVP requirements are in place." EPA continues to believe that, as this is only one of several possible defenses and many refiners are already voluntarily producing this information during the summer control period; it is not necessary to mandate production of such certification. Therefore, no change is being made to the certification requirement.

PMAA further requested that EPA clarify in its final rulemaking the nature of the periodic sampling and testing required as support for the certification defense. In particular, PMAA requested clarification regarding parties who purchase fuel directly from refiners with no commingling of gasoline or who pick up gasoline at a terminal. PMAA requested that EPA reaffirm its policy, as expressed in the April 1990 Question and Answer document, would apply to the new certification defense created for ethanol blends.

As stated in EPA's April 1990 Q&A document regarding defenses to RVP violations and quoted by PMAA, parties who purchase directly from refiners "may be able to rely on the sampling and testing of the refiner, especially if a branded refiner's oversight program includes periodic downstream sampling and testing." Regarding product received from a terminal, the Q&A document states that "a trucker may be able to arrange for testing to be performed by the terminal immediately before or after delivery." The additional regulatory defense for ethanol blends contained in this rule does not change this policy and this policy will apply to the periodic sampling and testing requirements for the certification defenses. Of course, as stated in the regulations, if a party has any reason to believe that the fuel does not meet the standards, that party may not rely on the certification or testing of another.

PMAA also requested that EPA extend the new certification defense to all RVP violations as it provided significant advantages to small business petroleum marketers. The defense, however, is statutorily mandated only for RVP violations involving ethanol gasoline blends. EPA continues to believe that the current defenses to non-ethanol RVP violations are adequate and reasonable for all the reasons provided when they were adopted.

E. RVP Upon Redesignation

New section 211(h) provides EPA with the authority to set a gasoline RVP limit of less than 9.0 psi for former nonattainment areas which have been redesignated attainment. In order for a nonattainment area to be so redesignated, revised section 107(d)(3) of the CAA requires the state to make a showing, pursuant to section 175A of the CAA, that the area is capable of maintaining attainment for 10 years. The Agency believed that any RVP standard change was best done as part of the redesignation process because the lower RVP could well be necessary for maintenance of attainment in areas which had achieved attainment with RVP control. The proposed regulations therefore continued the Phase II precedent which required a new rulemaking before any change in the volatility standard for an area would go into effect.

The National Council of Farmer Cooperatives (NCFC) commented on this policy, indicating that EPA would "not presume an area achieving attainment status based on 1983–93 air monitoring data requires 7.8 psi RVP fuel, but rather [should] set the area's maximum permissible RVP at the locality's previous three year average."

The Kansas City-Wyandotte County Department of Health, the Missouri Department of Natural Resources, the State of Kansas Department of Health and Environment and the Mid-America Regional Council all expressed strong support for EPA's position on this issues. Their comments describe the recent request by the states of Missouri and Kansas for redesignation of the bi-state Kansas City region as an attainment area for ozone. They also indicate that the Kansas City maintenance plans rely heavily upon the continued availability of 7.8 psi RVP gasoline after redesignation to project attainment for 10 years.

NCFC is correct that the RVP of the fuel being used while the area achieved attainment is an important factor to be considered when determining the proper future RVP of gasoline in a redesignated area. By today's action EPA does not intend to presume that a certain RVP level is required for a redesignated area. Rather, the Agency intends to leave the determination on gasoline RVP to that time when the redesignation occurs. Given that a redesignated area would recently have been in nonattainment for ozone, it is proper to continue the prior RVP level until a determination is made regarding the proper future RVP standard for the redesignated area.

For the reasons indicated above, EPA intends to make no change to the rule as proposed. The volatility standard for the gasoline in an area which is redesignated attainment will remain 7.8 psi RVP until the area completes and has approved by EPA a maintenance plan showing which contains 9.0 psi RVP fuel requirements. When an area is redesignated nonattainment, the volatility level of the gasoline will stay at 9.0 psi RVP unless and until EPA promulgates a change. Other changes may be requested by the state, as described in the preamble for the proposal.

F. Petitions for Rulemaking

In the preamble to the May NPRM, the Agency indicated its belief that this rulemaking was a satisfactory resolution of the concerns raised by the American Public Transit Association (APTA) and the National Council of Farmer Cooperative (NCFC) in their petitions regarding the existing urban bus particulate standard and gasoline volatility standard regulations. APTA spoke at the public hearing held for this rulemaking and stated, "APTA also support EPA's position that implementation of the changes directed by Congress resolves the concerns raised by APTA in its petition. APTA is satisfied that its concerns have been addressed in both the legislation and in the proposed implementing rulemaking.

and we accept EPA's plan to take no action beyond this rulemaking proposed on May 29, 1991 in response to APTA's petition."[3] APTA repeated this support in its written comments. NCFC did not object, stating that the NPRM responded positively to its petition.[4] Thus, as indicated in the proposal, EPA intends to take no further action in response to the above petitions.

G. 1993 Urban Bus Standards

Two commentors, APTA and the Flexible Corporation, have requested a change to the evaporative emissions provisions applicable to heavy-duty vehicles equipped with methanol-fueled diesel engines (including buses). Their concerns were based on the claimed inability of bus manufacturers to test for such emissions and on claimed hardware limitations with evaporative emissions. Today's rulemaking, however, merely delays the current 1991 model year urban bus particulate matter standard until 1993 and makes no changes to any other emission requirements. As the commenters concerns are outside the scope of this rulemaking, EPA is taking no action on them in this rulemaking.

APTA also expressed concern that the model year 1993 PM standard for urban buses was ambiguous. APTA appeared to request that it be clarified to refer to heavy heavy-duty engines. However, as noted in the proposal, EPA has deferred consideration of the 1993 PM standard for buses to a subsequent rulemaking implementing the various additional provisions of the Act applicable to buses. The APTA comment will be considered at that time.

H. Nonconformance Penalties

EPA has received comments requesting an increase in the Nonconformance Penalties (NCPs) charged manufacturers who cannot comply with the 1993 Urban Bus Particulate Matter (PM) standard from the Flxible Corporation, a manufacturer of urban buses, and APTA, an organization which represents bus operators. As stated in the preamble, the 1993 petroleum-fueled Urban Bus PM NCP was based on the use of trap technology. Both of the commenters agreed that this basis was proper, but felt that the actual costs were higher than estimated.

Flexible stated that it "must take issue" with EPA's assertion that the Agency must base the costs on the NCPs promulgated during the NCP III rulemaking because no better cost estimates are available. Flxible went on to state that particulate trap manufacturers were "quoting prices for particulate traps in an approximate range of $10,000 to $12,000" and asserted that "actual market prices being quoted in 1991 are a much more reliable indicator of future costs than cost estimates made in 1987". APTA stated that "[cost] estimates set forth by EPA are not in line with current trap quotes from engine manufacturers for certified engine/trap packages" and stated that traps cost "between $14,900 and $17,000". APTA also stated that EPA's cost estimates "do not include trap mounting brackets, hardware, tailpipes, tailpipe support hangers and other related parts" and that the cost for these items is "approximately $500."

The costs used in the proposal, as stated there, were developed during the NCP III rulemaking in 1990, not 1987, as stated by Flxible. NCP parameters are meant to reflect the costs of compliance at the time an emission standard comes into effect and include, among other things, the understanding that development work is complete and production is at full volume for the intended market. The information provided by the commenters considered the costs as they exist today, when development is ongoing, production volume is very small and trap manufacturers are facing largely unknown risks in terms of in-use durability and warranty replacement costs. The commenters did not provide a hardware specific breakdown of their costs or extrapolate current costs to the 1993 model year. EPA expects trap costs to decline substantially as in-use experience is accumulated and cost reduction techniques are applied. Therefore, EPA believes that the commenters have not provided sufficient detail to persuade EPA to revise the cost information pertaining to particulate traps for Urban Buses in 1993.

APTA commented that EPA did not include mounting brackets, hardware, tailpipes, tailpipe support hangers and other related parts. During the NCP III Final Rule, EPA estimated these costs in the document "Reanalysis of the Nonconformance Penalty Rates for 1991 and Later Model Year Urban Bus Engine Particulate Matter (PM) Standard" (see docket EN-87-02, Item IV-B-I). In that document the Agency stated that it "* * * estimates that the average cost [of stainless steel containers and associated piping] is $75 and that the high cost is $100." (p. 4) This cost does not include the cost of tailpipes, tailpipe support hangers, or any other hardware currently used on urban buses since those costs are not costs incurred as a direct result of the more stringent standard but are costs which are now being incurred by manufacturers for non-trap exhaust configurations.

Therefore, the Agency has determined that the NCP provisions should be retained as proposed.

III. Content of the Rule

As described above, the only substantive change to the proposed regulations in response to the comments received on the NPRM is the deletion of the pump labeling requirement for ethanol blends. With the exception of this change, the regulations finalized today are substantially the same as those proposed in May, with certain clarifications in the language. The following section describes the new regulations; a more thorough understanding of the rationale for these changes may be found in the NPRM.[5]

A. Urban Bus Particulate Matter Emissions Standards

Today EPA is finalizing a particulate emission standard of 0.25 g/BHP-hr for all 1991 and 1992 model year heavy-duty diesel engines used on urban buses. The 0.10 g/BHP-hr particulate emission standard for heavy-duty diesel engines used on urban uses which was in place for 1991 is being delayed until model year 1993. These standards will be implemented in the same manner as previous heavy-duty standards, including without limitation the averaging, trading and banking program under 40 CFR parts 86.091–15 and 86.094–15, and the heavy-duty exhaust test procedures under 40 CFR part 86, subpart D.

Today's final rule will change the petroleum-fueled urban bus particulate nonconformance penalty (NCP) promulgated under the NCP III Final Rule (55 FR 46622, November 5, 1990; 40 CFR 86.1105–87) to be consistent with the delay of the 0.10 g/BHP-hr particulate standard from the 1991 to the 1993 model year. EPA will apply the NCPs and NCP parameters which are applicable to 1991 and future model year petroleum-fueled heavy-duty diesel engines not used in urbran buses to model year 1991 and 1992 heavy-duty diesel engines used in urban buses as well.

[3] Record of Public Hearing held June 17, 1991 at Ann Arbor, pp. 10–11; Docket Item #IV–F–1.

[4] Letter from R. Thomas Van Arsdall Vice President, Agricultural Inputs and Services, for the National Council of Farmers Cooperatives to William K. Reilly dated July 17, 1991. Docket Item No. IV–D–04.

[5] 56 FR 24242 (May 29, 1991)

A revised set of NCP parameters is also finalized today for the 1993 petroleum-fueled urban bus particulate standard. The upper limit of emissions permitted for buses which are unable to meet the new standard will be the previous standard, 0.25 g/BHP-hr. COC_{50} and COC_{90} (the average cost of control and ninetieth percentile cost of control, respectively) are changed to $4,020 and 4,535, respectively. The average marginal cost of control in dollars per emission unit reduction (MC_{50}) will remain $22,971 per g/BHP-hr because the marginal cost of adding the least cost effective piece of hardware is still the marginal cost of adding a trap. Since trap technology is still being used as the benchmark for these calculations, the factor used to calculate the ninetieth percentile marginal cost of control from the average marginal cost of control (F) remains 1.2. The factor used to determine the engineering and development component of the NCP for refund purposes is changed to 0.02 to reflect the portion of the new COC_{50} which is attributed to fixed costs.

B. EPA Gasoline Volatility Program

1. Standards

Today, EPA is eliminating federal sub-9.0 psi requirements for those areas where EPA no longer has the authority to adopt such levels. More specifically, EPA is setting the Phase II RVP limit for gasoline at 9.0 psi in all areas not designated ozone nonattainment as a result of the redesignations required by section 107(d)(4)(A)(ii) of the CAA. (Designations are codified in volume 40 of the Code of Federal Regulations (CFR) part 81; the notice designating the areas pursuant to section 107(d)(4)(A)(ii) can be found at 56 FR 56694, November 6, 1991)

No change is being made in the federal RVP limit for gasoline sold in areas designated ozone nonattainment pursuant to section 107(d)(4)(A)(ii) of the Act. This means that sub-9.0 psi RVP gasoline will be required only in areas which are designated nonattainment for ozone and which are in states with a 7.8 psi RVP standard pursuant to the Phase II final rule (55 FR 23659, June 11, 1990).

EPA will rely on states to initiate changes to the EPA program which they believe will enhance local air quality and/or increase the economic efficiency of the program, within the statutory limits. EPA received strong endorsements of this strategy from some of the states affected (Docket entries IV-D-01, 04, 05 and 06).

2. Ethanol Blends

EPA is revising its regulations to require the use of denatured, anhydrous ethanol as a specific condition for the one psi allowance for ethanol blends. However, EPA is not making any change to the current requirement that the blend contain between 9 and 10 percent ethanol (by volume), excluding the denaturing agent, to obtain the one psi allowance. A slight change has been made to the language proposed in the May 29, 1991 NPRM to avoid confusion over calculation of the 9 percent ethanol concentration. The proposed definition of ethanol has been removed, and an explicit requirement for use of denatured anhydrous ethanol added to § 80.27(d)(2). This more clearly reflects the agency's intent, as described in 56 FR 24245 May 29, 1991). As stated in the preamble, in order to qualify for the one psi allowance, at least 9 percent of the blend must be pure ethanol (excluding the denaturing agent). The denaturing agent, while required, is not a part of the required 9 percent.

For example, if 100 gallons of gasoline contains 10 gallons (10 percent) denatured ethanol, and the 10 gallons of denatured ethanol is comprised of 90 percent (9 gallons) ethanol and 10 percent (1 gallon) denaturant, the fuel would qualify for the special regulatory treatment, since the amount of ethanol would be 9 percent (9 gallons) of the 100 gallon volume. If, however, the 10 gallons of denatured ethanol contained in the 100 gallon volume of gasoline is comprised of 80 percent (8 gallons) ethanol and 20 percent (2 gallons) denaturant, the gasoline would not qualify, since the amount of ethanol would be only 8 percent (8 gallons) of the 100 gallon volume of gasoline.

As discussed above, in response to comments received from RFA, EPA has deleted the ethanol pump labeling requirement.

A new defense against liability for violation of the ethanol blend RVP requirements is included in this package. This defense is for a distributor, blender, marketer, reseller, carrier, retailer, or wholesale purchaser-consumer who can demonstrate that the gasoline portion of an ethanol blend meets the applicable RVP standard, that the ethanol does not exceed its waiver condition under section 211(f)(4), and that no additional alcohol or other additive has been added to increase the volatility of the ethanol portion of the blend. This defense will provide protection from liability if the volatility of an ethanol blend exceeds the exemption standard when all requirements of the statute have been met. EPA believes that this statutorily mandated defense is in addition to and does not supersede any of the defenses currently contained in the regulations and therefore has made no changes to the other defenses.

Pursuant to this final rule, EPA is allowing a party to demonstrate the elements of the new defense by production of a certification from the facility from which the gasoline was received. EPA believes this defense is limited to ethanol blends which meet the minimum 9 percent requirement in the regulations and the maximum 10 percent requirement in the waivers under section 211(f)(4). Thus a certificate which otherwise meets the requirements of the regulations does not establish a defense for gasoline containing ethanol outside these percentages.

Today's final rule specifies when a certification will be considered acceptable to the Administrator for purposes of establishing this new defense. The certifications will have to contain the information called for in the statute, and must have been supplied by the facility from which the gasoline was received. For retailers or wholesale purchaser-consumers, a defense based on certifications will be acceptable only if all the gasoline in the tank where a violation is detected is covered by such certifications. For distributors, blenders, marketers, resellers and carriers, a certification will be accepted as a defense to a violation detected at that facility only if it is supported by evidence of an ongoing program to verify the accuracy of such certifications, such as a periodic sampling and testing program conducted by such person or on the facility's behalf. In addition, no certification will be accepted if the party at whose facility the violation is detected has reason to believe the certification is not accurate.

In effect, production of an acceptable certification or certifications replaces one element of a defense under EPA's current regulations, the requirement that a party prove he or she did not cause the violation. A party, however, is not limited to providing such certification to meet the new defense. The party may also demonstrate the defense elements by other evidence acceptable to the Administrator. EPA will evaluate such other evidence on a case by case basis to determine whether it is sufficient to establish that the defense elements have been met.

3. Regulatory Control Period and Regulated Parties

EPA has not made structural changes to the enforcement periods or timing

contained in the regulations Pursuant to the statutory requirements, EPA has expanded the group of regulated parties during the high ozone season to include "any person" [6]. The regulatory control period remains as under Phase II volatility control: May 1 through September 15. Additionally, as under the Phase II program, "[e]nforcement is delayed until June 1 at the beginning of the control season for end-users [retail outlets, wholesale purchaser-consumer and other consumers] to prevent outlets with slower turnover from needing advance supplies to RVP controlled gasoline from suppliers over which they often have little control" (June 11, 1990; 55 CFR 23659). Thus the "high ozone season" statutory prohibitions on all persons apply June 1 to September 15 but EPA has retained control over suppliers from May 1 through June 1. EPA believes that this regulatory scheme best ensures that gasoline is available when needed without unnecessary burdens on small retailers.

IV. Environmental and Economic Impact

Environmental and economic impact estimates remain unchanged from those described in the proposal, and are summarized below.

A. Urban Bus Particulate Matter Emissions Standard

For the two years 1991 and 1992, during which new urban buses purchased and placed in service will be required to comply with a particulate emission standard of 0.25 g/BHP-hr rather than 0.10 g/BHP-hr, the increase in national urban diesel particulate emissions was estimated to be no more than 70 tons in 1991 and 140 tons in 1992. Relative to the total urban diesel particulate inventory of approximately 70,000 tons, the overall effect will be small.

Changes in bus particulate emissions standards contained in this action could impact new vehicle price and perhaps vehicle operating costs due to changes in fuel economy and maintenance requirements. The relaxed standard will permit lower costs for the bus engine manufacturers in model years 1991 and 1992. Although it was earlier assumed that trap oxidizers would be used to meet the 0.10 g/BHP-hr, it is currently unclear what technology would have been used to meet the standard in 1991. It is therefore also unclear exactly how much savings will be realized due to this change. However, for a bus which is no longer required to have a trap, the savings could exceed several thousand dollars per bus.

B. EPA Gasoline Volatility Program

As described in the proposal, the changes made today in the volatility regulations are not expected to have a detrimental effect on the health of those living in the areas affected. The areas affected by the changes promulgated today are already in attainment of the ozone standard without the benefit of sub-9.0 psi RVP fuel. Additionally, 9.0 psi gasoline itself has a lower volatility than gasoline at previous uncontrolled volatility levels.

EPA believes that the economic effects of the changes promulgated today in the volatility regulations will be small. As fully discussed in the rulemaking for the Phase II volatility controls, it may be more economical for large refineries to market gasoline with only one RVP in a limited geographical area. This reduced cost derives from the simplification which results from only having to produce, store and distribute one type of product. Therefore, some refiners may continue to make 7.8 psi RVP fuel for attainment areas in a given geographic area if 7.8 psi RVP fuel is required in adjacent nonattainment areas. Those refiners marketing 9.0 psi RVP fuel will realize a cost savings of approximately 1.1 cents per gallon if they no longer have to make 7.8 psi fuel. EPA does not believe any great overall change in refinery operations or costs will occur as a result of this regulation. Any change will be positive for affected refiners and should result in lower costs to their customers.

V. Statutory Authority

The statutory authority for the regulations announced today is granted to EPA by sections 114, 202, 206, 211(c), 211(h) and 301(a) of the Clean Air Act, as amended.

VI. Administrative Designation and Regulatory Analysis

Under Executive Order 12291, EPA must judge whether a regulation is "major" and therefore, subject to the requirement that a Regulatory Impact Analysis be prepared. Major regulations have an annual effect on the economy in excess of $100 million, have a significant adverse impact on competition, investment, employment or innovation, or result in a major price increase. The two elements of this rulemaking package, individually and together, do not constitute major rules according to these criteria. In fact, as discussed above, the elements of this rulemaking package will reduce the cost of compliance with already existing rules for certain industrial sectors. Therefore, I have determined that this final rule does not constitute a "major" regulation.

This regulation was submitted to the Office of Management and Budget (OMB) for review as required by Executive Order 12291. Any written comments from OMB and EPA response to those comments have been placed in the public docket for this rulemaking.

VII. Compliance With the Regulatory Flexibility Act

Under section 605 of the Regulatory Flexibility Act, the Administrator is required to certify that a regulation will not have a significant adverse economic impact on a substantial number of small business entities. There will not be a significant impact on a substantial number of small business entities due to the new PM standards since none of the engine manufacturers which will be affected by these regulations are small business entities and any effect of this regulation would be beneficial. The changes in the volatility controls may have a significant beneficial impact on some smaller refiners. For these reasons, I certify that the rules contained in this final rule will not have a significant adverse economic impact on a substantial number of small entities.

VIII. Reporting and Recordkeeping Requirements

Under the Paperwork Reduction Act of 1980, 44 U.S.C. 3501 *et seq.*, EPA must obtain OMB clearance for any activity that will involve collecting substantially the same information from 10 or more non-Federal respondents. This final rule does not create any new information requirements or contain any new information collection activities.

IX. Judicial Review

Under section 307(b)(1) of the Clean Air Act, EPA hereby finds that these regulations are of national applicability. Accordingly, judicial review of this action is available only by filing a petition for review in the United States Court of Appeals for the District of Columbia Circuit within 60 days of publication. Under section 307(b)(2) of the Act, the requirements which are the subject of today's notice may not be challenged later in judicial proceedings brought by EPA to enforce these requirements.

List of Subjects

40 CFR Part 80

Fuel additives Gasoline, Imports, Labeling, Motor vehicle pollution, Penalties, Reporting and recordkeeping requirements.

[6] Section 211(h)(1) of the Clean Air Act, 42 U.S.C. 7545(h)(1).

40 CFR Part 86

Administrative practice and procedure, Confidential business information, Incorporation by reference, Labeling, Motor vehicle pollution, Reporting and recordkeeping requirements.

Dated: November 7, 1991.

William K. Reilly,

Administrator.

APPENDIX TO PREAMBLE.—TABLE OF CHANGES MADE TO VARIOUS SECTIONS OF 40 CFR

Section	Change	Reason
1. Part 80 Authority.	None	
2. Section 80.2(cc), and (dd).	Add definitions for designated volatility attainment area and designated volatility nonattainment area.	Implement CAAA of 1990.
3. Section 80.27(a), (d)(1), (d)(2), and (d)(3).	Revise paragraphs.	Change regulatory requirements to conform to CAAA of 1990.
4. Section 80.28(b)(1), (b)(3), (c)(1), (c)(4), (d)(1), (d)(4), (e)(1), (e)(2), (e)(5), (f)(1), (f)(2), (f)(4), and (g)(8).	Revise paragraphs (b)(1), (b)(3), (c)(1), (c)(4), (d)(1), (d)(4), (e)(1), (e)(2), (e)(5), (f)(1), (f)(2), (f)(4), and add paragraph (g)(8).	Add new defense.
5. Part 86 Authority.	Add reference to Sections 205 and 216.	Correct typographical error.
6. Section 86.091–11 (a)(1)(iv)(A) and (a)(1)(iv)(B).	Revise paragraphs.	Omit 1991 urban bus particulate standard of 0.10 g/BHP–hr.
7. Section 86.091–23 (c)(2).	Add section 86.091–23(c)(2)(ii).	Correct error.
8. Section 86.093–11.	Add section 86.093–11.	Add 1993 urban bus particular standard of 0.10 g/BHP–hr.
9. Section 86.1105–87 (c), (d) and (e).	Revise § 86.1105–87 (c) and (d); add § 86.1105–87(e).	Change NCPs to reflect new standards.

For the reasons set forth in the preamble, parts 80 and 86 of title 40 of the Code of Federal Regulations are amended as follows:

PART 80—REGULATIONS OF FUELS AND FUEL ADDITIVES

1. The authority citation for part 80 is revised to read as follows:

Authority: Sections 114, 211(c), 211(h) and 301(a) of the Clean Air Act as amended, 42 U.S.C. 7414, 7545(c), 7545(h) and 7601(a).

2. Section 80.2 is amended by adding new paragraphs (cc) and (dd) to read as follows:

§ 80.2 Definitions.

* * * * *

(cc) *Designated Volatility Nonattainment Area* means any area designated as being in nonattainment with the National Ambient Air Quality Standard for ozone pursuant to rulemaking under section 107(d)(4)(A)(ii) of the Clean Air Act.

(dd) *Designated Volatility Attainment Area* means an area not designated as being in nonattainment with the National Ambient Air Quality Standard for ozone pursuant to rulemaking under section 107(d)(4)(A)(ii) of the Clean Air Act.

3. Section 80.27 is amended by removing paragraph (a)(1) preceding the table, redesignating paragraph (a) heading and introductory text as paragraph (a)(1) and revising it, revising the text of paragraph (a)(2) preceding the table, adding a heading and footnote to the table in paragraph (a)(2), and revising paragraph (d) to read as follows:

§ 80.27 Controls and prohibitions on gasoline volatility.

(a)(1) *Prohibited activities in 1991.* During the 1991 regulatory control periods, no refiner, importer, distributor, reseller, carrier, retailer or wholesale purchaser-consumer shall sell, offer for sale, dispense, supply, offer for supply, or transport gasoline whose Reid vapor pressure exceeds the applicable standard. As used in this section and § 80.28, "applicable standard" means the standard listed in this paragraph for the geographical area and time period in which the gasoline is intended to be dispensed to motor vehicles or, if such area and time period cannot be determined, the standard listed in this paragraph that specifies the lowest Reid vapor pressure for the year in which the gasoline is being sampled. As used in this section and § 80.28, "regulatory control periods" mean June 1 to September 15 for retail outlets and wholesale purchaser-consumers and May 1 to September 15 for all other facilities.

* * * * *

(2) *Prohibited activities in 1992 and beyond.* During the 1992 and later high ozone seasons no person, including without limitation, no retailer or wholesale purchaser-consumer, and during the 1992 and later regulatory control periods, no refiner, importer, distributor, reseller, or carrier shall sell, offer for sale, dispense, supply, offer for supply, transport or introduce into commerce gasoline whose Reid vapor pressure exceeds the applicable standard. As used in this section and § 80.28, "applicable standard" means:

(i) 9.0 psi for all designated volatility attainment areas; and

(ii) The standard listed in this paragraph for the state and time period in which the gasoline is intended to be dispensed to motor vehicles for any designated volatility nonattainment area within such State or, if such area and time period cannot be determined, the standard listed in this paragraph that specifies the lowest Reid vapor pressure for the year in which the gasoline is sampled. Designated volatility attainment and designated volatility nonattainment areas and their exact boundaries are described in 40 CFR part 81, or such part as shall later be designated for that purpose. As used in this section and § 80.27, "high ozone season" means the period from June 1 to September 15 of any calendar year and "regulatory control period" means the period from May 1 to September 15 of any calendar year.

APPLICABLE STANDARDS [1] 1992 AND SUBSEQUENT YEARS

* * * * *

[1] Standards are expressed in pounds per square inch (psi).

* * * * *

(d) *Special provisions for alcohol blends.* (1) Any gasoline which meets the requirements of paragraph (d)(2) of this section shall not be in violation of this section if its Reid vapor pressure does not exceed the applicable standard in paragraph (a) of this section by more than one pound per square inch (1.0 psi).

(2) In order to qualify for the special regulatory treatment specified in paragraph (d)(1) of this section, gasoline must contain denatured, anhydrous ethanol. The concentration of the ethanol, excluding the required denaturing agent, must be at least 9% and no more than 10% (by volume) of the gasoline. The ethanol content of the gasoline shall be determined by use of one of the testing methodologies specified in appendix F to this part. The maximum ethanol content of gasoline shall not exceed any applicable waiver conditions under section 211(f)(4) of the Clean Air Act.

(3) Each invoice, loading ticket, bill of lading, delivery ticket and other

document which accompanies a shipment of gasoline containing ethanol shall contain a legible and conspicuous statement that the gasoline being shipped contains ethanol and the percentage concentration of ethanol.

* * * * *

4. Section 80.28 is amended by revising paragraphs (b)(1), (b)(3), (c)(1), (c)(4), (d)(1), (d)(4), (e)(1), (e)(2), (e)(5), (f)(1), (f)(2), (f)(4), and by adding a new paragraph (g)(8) to read as follows:

§ 80.28 Liability for violations of gasoline volatility controls and prohibitions.

* * * * *

(b) * * *

(1) The carrier, except as provided in paragraph (g)(1) or (g)(8) of this section; and

* * * * *

(3) The ethanol blender (if any) at whose ethanol blending plant the gasoline was produced, except as provided in paragraph (g)(6) or (g)(8) of this section.

(c) * * *

(1) The distributor or reseller, except as provided in paragraph (g)(3) or (g)(8) of this section;

* * * * *

(4) The ethanol blender (if any) at those ethanol blending plant the gasoline was produced, except as provided in paragraph (g)(6) or (g)(8) of this section.

(d) * * *

(1) The distributor, except as provided in paragraph (g)(3) or (g)(8) of this section;

* * * * *

(4) The ethanol blender (if any) at those ethanol blending plant the gasoline was produced, except as provided in paragraph (g)(6) or (g)(8) of this section.

(e) * * *

(1) The retailer or wholesale purchaser-consumer, except as provided in paragraph (g)(5) or (g)(8) of this section;

(2) The distributor and/or reseller (if any), except as provided in paragraph (g)(3) or (g)(8) of this section;

* * * * *

(5) The ethanol blender (if any) at those ethanol blending plant the gasoline was produced, except as provided in paragraph (g)(6) or (g)(8) of this section.

(f) * * *

(1) The retailer or wholesale purchaser-consumer, except as provided in paragraph (g)(5) or (g)(8) of this section;

(2) The distributor (if any), except as provided in paragraph (g)(3) or (g)(8) of this section;

* * * * *

(4) The ethanol blender (if any) at those ethanol blending plant the gasoline was produced, except as provided in paragraph (g)(6) or (g)(8) of this section.

(g) * * *

(8) In addition to the defenses provided in paragraphs (g)(1) through (g)(6) of this section, in any case in which an ethanol blender, distributor, reseller, carrier, retailer, or wholesale purchaser-consumer would be in violation under paragraphs (b), (c), (d), (e) or (f), of this section, as a result of gasoline which contains between 9 and 10 percent ethanol (by volume) but exceeds the applicable standard by more than one pound per square inch (1.0 psi), the ethanol blender, distributor, reseller, carrier, retailer or wholesale purchaser-consumer shall not be deemed in violation if such person can demonstrate, by showing receipt of a certification from the facility from which the gasoline was received or other evidence acceptable to the Administrator, that:

(i) The gasoline portion of the blend complies with the Reid vapor pressure limitations of § 80.27(a); and

(ii) The ethanol portion of the blend does not exceed 10 percent (by volume); and

(iii) No additional alcohol or other additive has been added to increase the Reid vapor pressure of the ethanol portion of the blend.

In the case of a violation alleged against an ethanol blender, distributor, reseller, or carrier, if the demonstration required by paragraphs (g)(8)(i), (ii), and (iii) of this section is made by a certification, it must be supported by evidence that the criteria in paragraphs (g)(8)(i), (ii), and (iii) of this section have been met, such as an oversight program conducted by or on behalf of the ethanol blender, distributor, reseller or carrier alleged to be in violation, which includes periodic sampling and testing of the gasoline or monitoring the volatility and ethanol content of the gasoline. Such certification shall be deemed sufficient evidence of compliance provided it is not contradicted by specific evidence, such as testing results, and provided that the party has no other reasonable basis to believe that the facts stated in the certification are inaccurate. In the case of a violation alleged against a retail outlet or wholesale purchaser-consumer facility, such certification shall be deemed an adequate defense for the retailer or wholesale purchaser-consumer, provided that the retailer or wholesale purchaser-consumer is able to show certificates for all of the gasoline contained in the storage tank found in violation, and, provided that the retailer or wholesale purchaser-consumer has no reasonable basis to believe that the facts stated in the certifications are inaccurate.

PART 86—CONTROL OF AIR POLLUTION FROM NEW AND IN-USE MOTOR VEHICLES AND NEW AND IN-USE MOTOR VEHICLE ENGINES: CERTIFICATION AND TEST PROCEDURES

5. The authority citation for part 86 is revised to read as follows:

Authority: Secs. 202, 203, 205, 206, 207, 208, 215, 216, and 301(a) of the Clean Air Act, as amended; 42 U.S.C. 7521, 7522, 7524, 7525, 7541, 7542, 7549, 7550 and 7601(a).

6. Section 86.091–11 of subpart A is amended by revising paragraph (a)(1)(iv)(A) and removing and reserving paragraph (a)(1)(iv)(B) to read as follows:

§ 86.091–11 Emission standards for 1991 and later model year diesel heavy-duty engines.

(a)(1) * * *

* * * * *

(iv) *Particulate* (A) For all diesel engines, including those to be used in urban buses, 0.25 gram per brake horsepower-hour (0.093 gram per megajoule) as measured under transient operating conditions.

(B) [Reserved]

* * * * *

6a. Section 86.091–23 of subpart A is amended by adding a paragraph (c)(2)(ii) to read as follows:

§ 86.091–23 Required data.

* * * * *

(c) * * *

(2) * * *

(ii) For heavy-duty diesel engines, a manufacturer may submit hot-start data only, in accordance with subpart N of this part, when making application for certification. However, for conformity SEA and recall testing by the Agency, both the cold-start and hot-start test data, as specified in subpart N of this part, will be included in the official results.

7. A new § 86.093–11 is added to subpart A to read as follows:

§ 86.093–11 Emission standards for 1993 and later model year diesel heavy-duty engines.

(a)(1) Exhaust emissions from new 1993 and later model year diesel heavy-

duty engines shall not exceed the following:

(i)(A) *Hydrocarbons (for petroleum-fueled diesel engines).* 1.3 grams per brake horsepower-hour (0.48 gram per megajoule), as measured under transient operating conditions.

(B) *Organic Material Hydrocarbon equivalent (for methanol-fueled diesel engines).* 1.3 grams per brake horsepower-hour (0.48 gram per megajoule), as measured under transient operating conditions.

(ii) *Carbon monoxide.* (A) 15.5 grams per brake horsepower-hour (5.77 grams per megajoule), as measured under transient operating conditions.

(B) 0.50 percent of exhaust gas flow at curb idle (methanol-fueled diesel only).

(iii) *Oxides of nitrogen.* (A) 5.0 grams per brake horsepower-hour (1.9 grams per megajoule), as measured under transient operating conditions.

(B) A manufacturer may elect to include any or all of its diesel heavy-duty engine families in any or all of the NO_x averaging, trading, or banking programs for heavy-duty engines, within the restrictions described in § 86.091–15. If the manufacturer elects to include engine families in any of the programs, the NO_x FELs may not exceed 6.0 grams per brake horsepower-hour (2.2 grams per megajoule). This ceiling value applies whether credits for the family are derived from averaging, trading or banking programs.

(iv) *Particulate.* (A) For diesel engines to be used in urban buses, 0.10 grams per brake horsepower-hour (0.037 gram per megajoule), as measured under transient operating conditions.

(B) For all other diesel engines only, 0.25 grams per brake horsepower-hour (0.093 gram per megajoule), as measured under transient operating conditions.

(C) A manufacturer may elect to include any or all of its diesel heavy-duty engine families in any or all of the particulate averaging, trading, or banking programs for heavy-duty engines, within the restrictions described in § 86.094–15. If the manufacturer elects to include engine families in any of these programs, the particulate FEL may not exceed 0.25 gram per brake horsepower-hour (.093 gram per megajoule) for diesel engines used in urban buses or 0.60 gram per brake horsepower-hour (0.22 gram per megajoule) for other diesel engines. This ceiling value applies whether credits for the family are derived from averaging, trading or banking programs.

(2) The standards set forth in paragraph (a)(1) of this section refer to the exhaust emitted over operating schedules as set forth in paragraph (f)(2) of Appendix I of this part, and measured and calculated in accordance with the procedures set forth in subpart N of this part, except as noted in § 86.091–23(c)(2)(i) and (ii).

(b)(1) The opacity of smoke emission from new 1993 and later model year diesel heavy-duty engines shall not exceed:

(i) 20 percent during the engine acceleration mode.

(ii) 15 percent during the engine lugging mode.

(iii) 50 percent during the peaks in either mode.

(2) The standards set forth in paragraph (b)(1) of this section refer to exhaust smoke emissions generated under the conditions set forth in subpart I of this part and measured and calculated in accordance with those procedures.

(3) *Evaporative emissions* (total of non-oxygenated hydrocarbons plus methanol) for 1993 and later model year heavy-duty vehicles equipped with methanol-fueled diesel engines shall not exceed:

(i) For vehicles with Gross Vehicle Weight Rating of up to 14,000 lbs., 3.0 grams per test.

(ii) For vehicles with a Gross Vehicle Weight Rating of greater than 14,000 lbs., 4.0 grams per test.

(4)(i) For vehicles with a Gross Vehicle Weight Rating of up to 26,000 lbs., the standards set forth in paragraph (b)(3) of this section refer to a composite sample of evaporative emission collected under the conditions set forth in subpart M of this part and measured in accordance with those procedures.

(ii) For vehicles with a Gross Vehicle Weight Rating of greater than 26,000 lbs., the standard set forth in paragraph (b)(3)(ii) of this section refers to the manufacturers' engineering design evaluation using good engineering practice (a statement of which is required in § 86.091–23(b)(4)(ii)).

(c) No crankcase emissions shall be discharged into the ambient atmosphere from any new 1993 or later model year methanol-fueled diesel, or any naturally-aspirated diesel heavy-duty engine. For petroleum fueled engines only, this provision does not apply to engines using turbocharters, pumps, blowers or superchargers for air induction.

(d) Every manufacturer of new motor vehicle engines subject to the standard prescribed in this section shall, prior to taking any of the actions specified in section 203(a)(1) of the Act, test or cause to be tested motor vehicle engines in accordance with applicable procedures in subpart I or N of this part to ascertain that such test engines meet the requirements of paragraphs (a), (b), and (c) and (d) of this section.

8. Section 86.1105–87 of subpart L is amended by revising paragraphs (c) and (d) and by adding a new paragraph (e) to read as follows:

§ 86.1105–87 Emissions standards for which nonconformance penalties are available.

* * * * *

(c) Effective in the 1991 model year, NCPs will be available for the following additional emission standards:

(1) Petroleum-fueled diesel heavy-duty engine particulate matter emission standard of 0.25 gram per brake horsepower-hour.

(i) For petroleum-fueled light heavy-duty diesel engines:

(A) The following values shall be used to calculate an NCP in accordance with § 86.1113–87(a):

(*1*) COC_{50}: $1,480.

(*2*) COC_{90}: $1,513.

(*3*) MC_{50}: $5,833 per gram per brake horsepower-hour.

(*4*) F: 1.2.

(B) The following factor shall be used to calculate the engineering and development component of the NCP in accordance with § 86.1113–87(h): 0.07.

(ii) For petroleum-fueled medium heavy-duty diesel engines:

(A) The following values shall be used to calculate an NCP in accordance with § 86.1113–87(a):

(*1*) COC_{50}: $905.

(*2*) COC_{90}: $2,169.

(*3*) MC_{50}: $7,083 per gram per brake horsepower-hour

(*4*) F: 1.2.

(B) The following factor shall be used to calculate the engineering and development component of the NCP in accordance with § 86.1113–87(h): 0.11.

(iii) For petroleum-fueled heavy heavy-duty diesel engines including those to be used for urban buses:

(A) The following values shall be used to calculate an NCP in accordance with § 86.1113–87(a):

(*1*) COC_{50}: $930.

(*2*) COC_{90}: $1,630.

(*3*) MC_{50}: $22,500 per gram per brake horsepower-hour.

(*4*) F. 1.2.

(B) The following factor shall be used to calculate the engineering and development component of the NCP in accordance with § 86.1113–87(h): 0.11.

(2) Petroleum-fueled diesel heavy-duty engine oxides of nitrogen standard of 5.0 grams per brake horsepower-hour.

(i) For petroleum-fueled light heavy-duty diesel engines:

(A) The following values shall be used to calculate an NCP in accordance with § 86.1113–87(a):

(*1*) COC_{50}: $830.

(2) COC_{90}: $946.

(3) MC_{50}: $1,167 per gram per brake horsepower-hour.

(4) F: 1.2.

(B) The following factor shall be used to calculate the engineering and development component of the NCP in accordance with § 86.1113–87(h): 0.12.

(ii) For petroleum-fueled medium heavy-duty diesel engines:

(A) The following values shall be used to calculate an NCP in accordance with § 86.1113–87(a):

(1) COC_{50}: $905.

(2) COC_{90}: $1,453.

(3) MC_{50}: $1,417 per gram per brake horsepower-hour.

(4) F: 1.2.

(B) The following factor shall be used to calculate the engineering and development component of the NCP in accordance with § 86.1113–87(h): 0.11.

(iii) For petroleum-fueled heavy-duty diesel engines:

(A) The following values shall be used to calculate an NCP in accordance with § 86.1113–87(a):

(1) COC_{50}: $930.

(2) COC_{90}: $1,590.

(3) MC_{50}: $2,250 per gram per brake horsepower-hour.

(4) F: 1.2.

(B) The following factor shall be used to calculate the engineering and development component of the NCP in accordance with § 86.1113–87(h): 0.11.

(3) Petroleum-fueled diesel light-duty trucks (between 6,001 and 14,000 lbs GVW) particulate matter emission standard of 0.13 grams per vehicle mile.

(i) The following values shall be used to calculate an NCP in accordance with § 86.1113–87(a):

(A) COC_{50}: $711.

(B) COC_{90}: $1,396.

(C) MC_{50}: $2,960 per gram per brake horsepower-hour.

(D) F: 1.2.

(ii) The following factor shall be used to calculate the engineering and development component of the NCP in accordance with § 86.1113–87(h): 0.01.

(d) Effective in the 1993 model year, NCPs will be available for the following additional emission standard:

(1) Petroleum-fueled diesel urban bus engine (as defined in § 86.091–2) particulate matter emission standard of 0.10 grams per brake horsepower-hour.

(I) The following values shall be used to calculate an NCP for the standard set forth in § 86.093–11(a)(1)(iv)(A) in accordance with § 86.1113–87(a):

(A) COC_{50}: $4,020.

(B) COC_{90}: $4,535.

(C) MC_{50}: $22,971 per gram per brake horsepower-hour.

(D) F: 1.2.

(E) UL: 0.25 grams per brake horsepower-hour.

(ii) The following factor shall be used to calculate the engineering and development component of the NCP for the standard set forth in § 86.093–11(a)(1)(iv)(A) in accordance with § 86.1113–87(h): 0.02.

(2) [Reserved].

(e) The values of COC_{50}, COC_{90}, and MC_{50} in paragraphs (a) and (b) of this section are expressed in December 1984 dollars. The values of COC_{50}, COC_{90}, and MC_{50} in paragraph (c) and (d) of this section are expressed in December 1989 dollars. These values shall be adjusted for inflation to dollars as of January of the calendar year preceding the model year in which the NCP is first available by using the change in the overall Consumer Price Index, and rounded to the nearest whole dollar in accordance with ASTM E29–67 (reapproved 1980). The incorporation by reference of ASTM E29–67 (reapproved 1980), Standard Recommended Practice for Indicating Which Places of Figures are to be Considered Significant in Specified Limiting Values, was approved by the director of the Federal Register in accordance with 5 U.S.C. 552(a) and 1 CFR part 51. It is available from ASTM, 1916 Race Street, Philadelphia, PA 19103, and also available for inspection as part of Docket A–91–06, located at the Central Docket Section, EPA, 401 M Street, SW., Washington DC, 20460 or at the office of the Federal Register, 1100 L Street, NW., room 8401, Washington, DC. This incorporation by reference was approved by the Director of the Federal Register on January 13, 1992. These materials are incorporated as they exist on the date of the approval and a notice of any change in these materials will be published in the Federal Register.

[FR Doc. 91–29564 Filed 12–11–91; 8:45 am]

BILLING CODE 6560–50–M

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

43 CFR Public Land Order 6916

[CO–930–4214–10; COC–24224]

Withdrawal of Public Lands for Browns Canyon Primitive and Recreation Area; Colorado

AGENCY: Bureau of Land Management, Interior.

ACTION: Public Land Order.

SUMMARY: This order withdraws 2,214 acres of public lands from surface entry and mining for 20 years to protect primitive and recreational values in Browns Canyon. The lands have been and will remain open to mineral leasing.

EFFECTIVE DATE: December 12, 1991.

FOR FURTHER INFORMATION CONTACT: Doris E. Chelius, BLM Colorado State Office, 2850 Youngfield Street, Lakewood, Colorado 80215–7076, 303–239–3706.

By virtue of the authority vested in the Secretary of the Interior by section 204 of the Federal Land Policy and Management Act of 1976, 43 U.S.C. 1714 (1988), it is ordered as follows:

1. Subject to valid existing rights, the following described public lands, which are under the jurisdiction of the Secretary of the Interior, are hereby withdrawn from settlement, sale, location or entry under the general land laws, including the United States mining laws (30 U.S.C. ch. 2 (1988)), but not from leasing under the mineral leasing laws, for the Bureau of Land Management to protect scenic, historic, recreation, geologic, primitive, and other natural environmental values:

New Mexico Principal Meridian

T. 51 N., R. 8 E.
- Sec. 11, lots 1, 2, and 3, S½NE¼, E½SE¼, and E½SW¼SE¼;
- Sec. 12, W½W½SW¼;
- Sec. 13, W½NW¼NW¼;
- Sec. 14, NE¼, SE¼NW¼, E½SW¼, and W½SE¼;
- Sec. 23, W½NE¼, E½E½NW¼, E½SW¼, and W½W½SE¼;
- Sec. 26, W½NE¼, NE¼NW¼, E½SE¼ NW¼, E½SW¼, SE¼SW¼SW¼, NW¼SE¼, and W½SE¼SE¼;
- Sec. 34, S½NE¼NE¼ and SE¼NE¼;
- Sec. 35, N½NW¼ and N½SW¼NW¼.

Sixth Principal Meridian

T. 15 S., R. 77 W.,
- Sec. 30, lots 2, 3, and 4;
- Sec. 31, lots 1, 2, 3, and 4, and W½E½W½.

T. 15 S., R. 78 W.,
- Sec. 12, SW¼SW¼;
- Sec. 13, E½SW¼ and SW¼SE¼;
- Sec. 24, W½NE¼ and N½SE¼;
- Sec. 25, SE¼NE¼ and E½SE¼.

The areas described aggregate 2,214.31 acres of public lands in Chaffee County.

2. The withdrawal made by this order does not alter the applicability of those public land laws governing the use of the lands under lease, license, or permit, or governing the disposal of their mineral or vegetative resources other than under the mining laws.

3. This withdrawal will expire 20 years from the effective date of this order unless, as a result of a review conducted before the expiration date pursuant to section 204(f) of the Federal Land Policy and Management Act of 1976, 43 U.S.C. 1714(f) (1988), the

Secretary determines that the withdrawal shall be extended.

Dave O'Neal,

Assistant Secretary of the Interior.

[FR Doc. 91-29647 Filed 12-11-91; 8:45 am]

BILLING CODE 4310-JB-M

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Parts 0, 1, 80 and 87

[DA 91-1482]

Non-substantive Revisions of Parts 0, 1, 80 and 87 of the Commission's Rules Governing Applications and Filing Procedures

AGENCY: Federal Communications Commission.

ACTION: Final rule.

SUMMARY: This Order reflects changes made in the Private Radio Bureau's application procedures to accommodate the new fee collection process. This action is necessary to inform the public of the new application procedures made to accommodate the new fee collection program. The effect of this action is to revise certain applications and procedures, such as those for waivers and exemptions to accommodate the new fee collection process.

EFFECTIVE DATE: December 12, 1991.

FOR FURTHER INFORMATION CONTACT: Susan Jones, Special Services Division, Private Radio Bureau (202) 632-7175.

SUPPLEMENTARY INFORMATION: .

Order

Adopted: November 22, 1991;
Released: December 6, 1991

By the Chief, Private Radio Bureau, and the Managing Director:

1. On April 20, 1990, the Commission released a Memorandum Opinion and Order, 5 FCC Rcd 3558 (1990) 55 FR 19148, May 8, 1990, amending the Commission's Rules to implement a fee collection program mandated by Congress in the Omnibus Budget Reconciliation Act of 1989.[1] Fees are now sent, along with the application, to a designated depository. To accommodate the new fee collection process, the Commission has had to modify applications and certain procedures, such as those for waivers and exemptions. This Order makes non-substantive amendments to §0.401(a) (3) (i), 0.481, 0.482, 0.491, 1.912(a), 1.912(b) (1), 1.912(b)(3), 1.912(d), 1.912(e), 1.922, 1.926(a)(2), 1.931(a), 1.962(g), 1.1102, 80.19, 80.59, 87.21, and 87.25 of the Commission's Rules. 47 CFR 0.401(a) (3) (i), 0.481., 0.482, 0.491, 1.912(a). 1.912(b) (1), 1.912(b)(3), 1.912(d), 1.912(e), 1.922, 1.926(a)(2), 1.931(a), 1.962(g), 1.1102, 80.19, 80.59, 87.21, and 87.25, to reflect the changes made in the Private Radio Bureau's Application procedures.

2. Accordingly, *It is Ordered* That, pursuant to the authority delegated under section 5(c)(1) of the Communications Act of 1934, as amended, 47 U.S.C. 155(c)(1), and §§ 0.231(d) and 0.331(a) (1) of the Commission's Rules, 47 CFR 0.231(d), 0.331(a)(1), parts 0, 1, 80 and 87 of the Commission's Rules are amended as set forth below.

3. *It is further Ordered* That, as nonsubstantive rule changes, not subject to the effective date provisions in the Administrative Procedure Act, these amendments are effective upon publication in the **Federal Register**. See section 553(b) (3) (A) of the Administrative Procedure Act, 5 USC 553(b)(3)(A).

Federal Communications Commission.

Ralph A. Haller,

Chief, Private Radio Bureau.

List of Subjects

47 CFR Part 0

Organization and Functions, Reporting and Recordkeeping requirements.

47 CFR Part 1

Administrative practice and procedure.

47 CFR Parts 80 and 87

Radio, Reporting and recordkeeping requirements.

Rule Changes

Parts 0, 1, 80 and 87 of chapter 1 of title 47 of the Code of Federal Regulations are amended as follows:

PART 0—COMMISSION ORGANIZATION

1. The authority citation for part 0 continues to read as follows:

Authority: Secs 5, 48 Stat. 1068, as amended; 47 U.S.C. 155.

2. Section 0.401 is amended by revising paragraph (a)(3)(i) to read as follows:

§ 0.401 Location of Commission offices.

* * * * *

(a) * * *

(3) * * *

(i) The mailing address of the Private Radio Bureau Licensing Division is: Federal Communications Commission, 1270 Fairfield Road, Gettysburg, Pennsylvania 17325-7245.

* * * * *

3. Section 0.481 is revised to read as follows:

§ 0.481 Place of filing applications for radio authorizations.

For locations for filing applications, and appropriate fees, see § 1.1102-1.1105 of this chapter.

4. Section 0.482 is amended by revising the second sentence to read as follows:

§ 0.482 Application for waiver of private radio rules.

* * * Waiver requests that do not require a fee should be addressed to: Federal Communications Commission, 1270 Fairfield Road, Gettysburg, Pennsylvania 17325-7245. * * *

5. Section 0.491 is revised to read as follows:

§ 0.491 Applications for exemption from compulsory ship radio requirements.

Applications for exemption filed under the provisions of section 352(b) or 383 of the Communications Act; Regulation 4, chapter I of the Safety Convention; Regulation 5, chapter IV of the Safety Convention; Regulation 5, chapter IV of the Safety Convention; or article IX of the Great Lakes Agreement, must be filed at Exemption Requests, P.O. Box 358300, Pittsburgh, Pennsylvania 15251-5300. Emergency requests must be filed at the Federal Communications Commission, Office of the Secretary, 1919 M Street, NW., room 222, Washington, DC 20554.

PART 1—PRACTICE AND PROCEDURE

1. The authority citation for part 1 continues to read as follows:

Authority: Secs. 4, 303, 48 Stat. 1066, 1082, as amended; 47 U.S.C. 154, 303; Implement, 5 U.S.C. 552, unless otherwise noted.

2. Section 1.912 is amended by revising the third sentence in paragraph (a), revising the last sentence in paragraph (b)(1), revising paragraphs (b)(3), (d) and the first sentence in paragraph (e) to read as follows:

§ 1.912 Where applications are to be filed.

(a) * * * All other applications for amateur radio licenses must be submitted to the Federal Communications Commission, 1270 Fairfield Road, Gettysburg, Pennsylvania 17325-7245. * * *

(b) * * *

[1] Public Law No. 101-239, 103 Stat. 2106 (1989).

(1) * * * After appropriate frequency coordination, such applications must be forwarded to the Federal Communications Commission, 1270 Fairfield Road, Gettysburg, Pennsylvania 17325–7245.

(2) * * *

(3) All applications for private land mobile licenses that do not require either frequency coordination or a fee must be sent to Federal Communications Commission, 1270 Fairfield Road, Gettysburg, Pennsylvania 17325–7245.

* * * * *

(d) Formal applications for ship station licenses (FCC Forms 506 and 405–B), for aircraft station licenses (FCC Forms 404 and 405–B), and applications for Maritime Coast and Aviation Ground Stations, requiring fees as set forth in part 1, subpart G of this chapter must be filed in accordance with § 1.1102 of the rules.

(e) All other applications that do not require fees must be filed with the Commission's offices in Gettysburg, Pennsylvania. Address the applications to: Federal Communications Commission, 1270 Fairfield Road, Gettysburg, Pennsylvania 17325–7245.

* * *

3. The table in § 1.922 is amended by removing reference to FCC Form 405–A, Application for Renewal of Radio Station License (Short Form), and adding FCC Form 452–R, Application for Renewal of Coast and Ground Services, to read as follows:

§ 1.922 Forms to be used.

FCC Form	Title
* * * * *	
452–R	Application for Renewal of Coast and Ground Services.
* * * * *	

4. Section 1.926 is amended by revising paragraph (a)(2) to read as follows:

§ 1.926 Application for renewal of license.

(a) * * *

(2) Renewal of marine coast station authorizations (§ 80.19 of this chapter) and aviation ground station authorizations (§ 87.33 of this chapter) must be submitted on FCC Form 452–R.

* * * * *

5. Section 1.931 is amended by revising the second sentence of paragraph (a) to read as follows:

§ 1.931 Requests for waiver of private radio rules.

(a) * * * Waiver requests that do not require a fee must be addressed to: Federal Communications Commission, 1270 Fairfield Road, Gettysburg, Pennsylvania 17325–7245. * * *

* * * * *

6. Section 1.962 is amended by revising the second sentence of paragraph (g) to read as follows:

§ 1.962 Public notice of acceptance for filing; petitions to deny applications of specified categories.

* * * * *

(g) * * * Such petitions must be filed with the Commission's offices in Gettysburg, Pennsylvania. Address them to: Federal Communications Commission, 1270 Fairfield Road, Gettysburg, Pennsylvania 17325–7245. * * *

* * * * *

§ 1.1102 [Amended]

7. Section 1.1102 is amended by replacing "FCC 405–A" with "FCC 452–R" in paragraphs (1)(c) and (4)(c).

PART 80—STATIONS IN THE MARITIME SERVICES

1. The authority citation for part 80 continues to read:

Authority: Secs. 4, 303, 48 Stat. 1066, 1082, as amended; 47 U.S.C. 154, 303, unless otherwise noted. Interpret or apply 48 Stat. 1064–1068, 1081–1105, as amended; 47 U.S.C. 151–155, 301–609; 3 UST 3450, 3 UST 4726, 12 UST 2377.

2. Section 80.19 is amended by revising the entry for Maritime support in the table to read as follows:

§ 80.19 Standard forms to be used.

* * * * *

Class of station(s)	Application for	Use
* * * * *		
Maritime support	Renewal of license without modification.	FCC Form 452–R
* * * * *		

3. Section 80.59 is amended by revising paragraph (c) to read as follows:

§ 80.59 Compulsory ship stations.

* * * * *

(c) *Application for exemption.* FCC Form 820 must be used to apply for exemption from the radio provisions of part II or III of title III of the Communications Act, the Safety Convention, or the Great Lakes Radio Agreement, or for modification or renewal of an exemption previously granted. Applications for exemptions must be submitted to Federal Communications Commission, Waiver Requests, P.O. Box 358300, Pittsburgh, Pennsylvania, 15251–5300. Such applications must be accompanied by the appropriate fee amount, as set forth in § 1.1102 of this chapter. Emergency requests must be filed with the Federal Communications Commission, Office of the Secretary, 1919 M Street, NW., room 222, Washington, DC 20554.

(**Note:** with emergency requests, do not send the fee, you will be billed.)

* * * * *

PART 87—AVIATION SERVICES

Subpart B—Applications and Licenses

1. The Authority citation for part 87 continues to read as follows:

Authority: 48 Stat. 1066, 1082, as amended; 47 U.S.C. 154, 303, unless otherwise noted. Interpret or apply 48 Stat. 1064–1068, 1081–1105, as amended; 47 U.S.C. 151–156, 301–609.

§ 87.21 [Amended]

2. Section 87.21 is amended by replacing "FCC Form 405–A" with "FCC Form 452–R" in the table in paragraph (b).

§ 87.25 [Amended]

Section 87.25 is amended by removing the entire Note following paragraph (f).

[FR Doc. 91–29620 Filed 12–11–91; 8:45 am]

BILLING CODE 6712–01–M

47 CFR Part 94

[PR Docket No. 90–5; FCC 91–369]

Video Entertainment Distribution in the 18 GHz Band

AGENCY: Federal Communications Commission.

ACTION: Final rule; order on reconsideration.

SUMMARY: The Commission has adopted a Memorandum Opinion and Order issued in response to two petitions for reconsideration of the Report and Order at 56 FR 9900 (March 8, 1991). In the Memorandum Opinion and Order, the Commission denied the petition filed by the Utilities Telecommunications Council (UTC), and granted the request for clarification that formed the basis of the petition filed by Microwave Radio Corporation (MRC).

EFFECTIVE DATE: January 13, 1992.

FOR FURTHER INFORMATION CONTACT: Karen Kincaid, (202) 634–2443, Private Radio Bureau.

SUPPLEMENTARY INFORMATION: This is a summary of the Commission's Memorandum Opinion and Order, PR Docket No. 90–5, FCC 91–369, adopted November 12, 1991, and released December 4, 1991. The full text of this Memorandum Opinion and Order is available for inspection and copying during normal business hours in the FCC Dockets Branch, room 230, 1919 M Street NW., Washington, DC. The complete text may be purchased from the Commission's copy contractor, Downtown Copy Center, 1114 21st Street, Washington, DC 20036, telephone (202) 452–1422.

Summary of Memorandum Opinion and Order

1. In the Report and Order in PR Docket No. 90–5, the Commission amended its rules to permit alternative multichannel video providers eligible in the Operational-Fixed Microwave Service (OFS) to use the 6 MHz wide, point-to-point frequencies in the 18 GHz band for the distribution of video entertainment material. In so doing, we noted that this action would promote the public interest by responding to the need for competition in the video distribution marketplace. In addition, as a corollary matter, we amended 47 CFR 94.15(g) to make the four-channel-per-transmitter-site limitation set forth therein inapplicable when the 18 GHz frequencies are used for the delivery of video entertainment programming. In taking this step, we stated that the amendment of § 94.15(g) is necessary to enable alternative multichannel operators eligible in the OFS to transmit the number of channels necessary to meet subscriber demand and vie with competitors' offerings. Finally, we viewed the proceeding as an excellent opportunity to clarify certain portions of 47 CFR 94.9, and restructured this rule part.

2. UTC filed a petition for reconsideration challenging the amendment of § 94.15(g). UTC's primary argument was that the Commission failed to set forth sufficient reasons justifying the channel capacity made available to entities engaged in the distribution of video entertainment material. In denying UTC's request for reconsideration, we stated that our decision in the Report and Order with regard to § 94.15(g) responded to the well-documented and frequently reiterated request advanced by alternative multichannel video distribution operators for access to microwave spectrum that would permit them to transmit the signals they receive via satellite to various other receiving locations in a manner allowing them to compete more effectively with franchised cable systems.

3. In its petition, MRC expressed concern that certain portions of the Commission's clarification of 47 CFR 94.9 might be construed as a change in existing policy that would effectively prohibit television broadcasters from using the 21.8–22.4 and 23.0–23.6 GHz bands for studio-to-transmitter links. MRC requested us to modify the new § 94.9 to make plain that no change in policy had occurred. We agreed with MRC that the version of § 94.9 adopted in the Report and Order should be modified to this effect.

List of Subjects in 47 CFR Part 94

Operational-fixed microwave service, Communications equipment, Video entertainment material, 18 GHz band.

Amendatory Text

Part 94 of chapter 1 of title 47 of the Code of Federal Regulations is amended as follows:

PART 94—AMENDED

1. The authority citation for part 94 continues to read as follows:

Authority: Sections 4, 303, 48 Stat., as amended, 1066, 1082; 47 U.S.C. 154, 303, unless otherwise noted.

2. Section 94.9 is amended by revising paragraph (b)(2) to read as follows:

§ 94.9 Permissible communications.

* * * * *

(b) * * *

(2) Transmit program material for use in connection with broadcasting, except as provided in paragraphs (a)(2), (a)(7) and (a)(8) of this section.

* * * * *

Federal Communications Commission.

Donna R. Searcy,

Secretary.

[FR Doc. 91–29692 Filed 12–11–91; 8:45 am]

BILLING CODE 6712–01–M

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

50 CFR Part 17

RIN 1018–AB56

Endangered and Threatened Wildlife and Plants; Point Arena Mountain Beaver (Aplodontia rufa nigra) Determined To Be Endangered

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Final rule.

SUMMARY: The U.S. Fish and Wildlife Service (Service) determines endangered status for the Point Arena mountain beaver (*Aplodontia rufa nigra*) under the authority of the Endangered Species Act of 1973, as amended (Act). Limited in distribution to cool, moist areas along the Pacific coast, Mendocino County, California, the Point Arena mountain beaver now occurs in only 10 known sites, comprising a total of about 100 individuals. Within its localized habitat, threats to the Point Arena mountain beaver include livestock grazing, highway construction and maintenance, public access and recreational use, rodent control, exotic plant expansion, housing developments, stream impoundments and irrigations, predation by feral and pet cats and dogs, and agricultural use. A proposal to erect a microwave tower within habitat occupied by the largest known population is the most significant threat at this time. The excavation for the tower, as originally planned, will destroy habitat used by one-half of the estimated 20 Point Arena mountain beavers at that site. Due to the threat posed by this proposal, this listing is effective immediately.

EFFECTIVE DATE: December 12, 1991.

ADDRESSES: The complete file for this rule is available for inspection by appointment during normal business hours at U.S. Fish and Wildlife Service, 2800 Cottage Way, room E–1803, Sacramento, California 95825–1846.

FOR FURTHER INFORMATION CONTACT: Mr. Michael Horton, Wildlife Biologist, at the above address (phone 916/978–4866 or FTS 460–4866).

SUPPLEMENTARY INFORMATION:

Background

The Point Arena mountain beaver (*Aplodontia rufa nigra*) is a member of the family Aplodontidae, which is represented by a monotypic genus and species. This family is in the order Rodentia, suborder Sciuriomorpha and apparently represents the oldest known group of living rodents, the Aplodontids, which are thought to be ancestral to sciurid rodents (Steele 1986).

Taylor (1914) described the Point Arena mountain beaver as a full species (*Aplodontia nigra*), but later Taylor (1918) revised his treatment, reducing the taxon to subspecific status as *Aplodontia rufa nigra*. Although the taxon is geographically isolated, Taylor (1918) felt the revision was justified. The paucity of specimens and the extensive overlap in certain cranial and external characteristics led him to conclude that full species status could not be

supported in relation to other California coastal mountain beavers. Several revisions to the species (*Aplodontia rufa*) have been made (Dalquest and Scheffer 1945, Hall and Kelson 1959, Hall 1981), with the Point Arena mountain beaver being maintained as a subspecies.

Certain cranial and external characteristics separate the Point Arena mountain beaver from other subspecies of mountain beavers (Taylor 1918). For example, only *Aplodontia rufa nigra* has black and gray fur on the dorsal surface. The black pelage characteristic of the male and female adult Point Arena mountain beaver is seen as early as July in young of the year. In the other subspecies, coastal individuals tend to be darker than inland animals, though none are as dark as the Point Arena mountain beaver. Osteologically, the outline and breadth of the Point Arena mountain beaver's nasal bones represent a unique cranial characteristic. The Point Arena form is stocky and cylindrical in body shape with a broad, massive, laterally compressed skull. The skull's flat upper surface and lack of postorbital processes are noteworthy (Hall 1981). Mountain beavers possess small eyes, rounded ears, and a distinctive cylindrical stump of a tail. Each forepaw has an opposable thumb and all digits have long, curved claws.

Three well-differentiated subspecies of mountain beavers, the Humboldt mountain beaver (*Aplodontia rufa humboldtiana*), Point Arena mountain beaver (*A. r. nigra*), and Point Reyes mountain beaver (*A. r. phaea*) are distributed along the north coast of California. Each of these is geographically separated by considerable distances (Steele 1986). Approximately 80 miles separate the Point Arena mountain beaver from the range of its northern conspecific, the Humboldt mountain beaver. To the south, the range of the Point Reyes mountain beaver begins about 60 miles from the southern limit of the distribution of the Point Arena taxon.

Of the seven subspecies of mountain beaver occurring on the coast or inland, the Point Arena form has the most limited distribution and is found only in coastal Mendocino County, California. Historical collection records noted populations between the town of Point Arena and Alder Creek, a distance of about 6.8 miles (Camp 1918). Data from the Christiansen Ranch area increased the known range about 5 miles further north (Pfeiffer 1954). In 1981 Steele attempted to relocate the four historically known populations, but found that only the population at Alder Creek remained. He did, however, discover three previously unrecorded populations (Steele 1982). These areas were resurveyed by Steele in 1986, resulting in a total of eight known populations, four of which were observed during the 1981 field survey (Steele 1982, 1986). In 1989 and 1991, two additional populations were discovered at Manchester State Beach (Dale Steele, ecologist, California Department of Transportation, pers. comm. 1989; Steele, pers. comm. 1991). All 10 populations are located within the previously described geographical range of about 12 miles along the coast line. Populations are found at Mallo Pass Creek, Irish Creek, Alder Creek, Manchester State Beach (four sites including the American Telephone and Telegraph communication facility), Lagoon Lake, Minor Hole Road, and Point Arena, Mendocino County, California (Steele 1982, 1986; Steele, pers. comm. 1989 and 1991).

Mountain beavers are restricted in geographic distribution to cool, moist areas receiving heavy rainfall (25–60 inches per year) along the Pacific Coast and Sierra Nevada, extending from southern British Columbia to central California (Steele 1986). The Point Arena subspecies occurs only in Mendocino County, California, within the coastal, narrow, and irregularly shaped valleys. These valleys have relatively warm temperatures because the ridges block the cool, moist onshore ocean breezes, thereby limiting the potential moist habitat required by the Point Arena mountain beaver.

Point Arena mountain beaver populations have been located on steep, northfacing slopes or in protected gulches. Burrowing activities usually are conducted under dense vegetation, where moisture conditions make the soil relatively easy to excavate. Microhabitat conditions include an abundant supply of food plants and moderately deep and firm soil with good drainage (Steele 1986). Those populations on coastal strand/coastal scrub habitat are less sheltered; however, strong winds and a persistent marine influence prevent extreme fluctuations in temperature (Steele 1986).

Point Arena mountain beavers are found in habitats with four basic types of vegetation: Coastal scrub, coniferous forest, riparian, and stabilized dunes (coastal strand). Habitat types for the 10 populations are as follows: Point Arena—coastal scrub, Minor Hole Road—coastal scrub/riparian, Lagoon Lake—coastal scrub, Alder Creek—coastal scrub/riparian, Mallo Pass Road—coastal scrub/riparian, Manchester State Beach (three populations)—coastal scrub/coastal strand, American Telephone and Telegraph communication facility at Manchester State Beach—coastal scrub/coastal strand, and Irish Gulch—coastal scrub/riparian/coniferous forest.

Coastal scrub species include cow-parsnip (*Heracleum lanatum*), coyote brush (*Baccharis pilularis*), wax-myrtle (*Myrica californica*), California blackberry (*Rubus vitifolius*), salal (*Gaultheria shallon*), and poison-oak (*Rhus diversiloba*). Coastal strand habitat consists of lupine (*Lupinus arboreus*), coyote brush, coast goldenrod (*Solidaga spathulata*), dune grasses, and ice plant (*Mesembryanthemum* spp.). At the Irish Creek population site, the coniferous overstory is composed primarily of Douglas-fir (*Pseudotsuga menziesii*), grand fir (*Abies grandis*), and bishop pine (*Pinus muricata*). Riparian and coastal scrub species are prevalent in the understory of the Irish Creek site and include species such as thimbleberry (*Rubus parviflorus*), nettle (*Urtica* spp.), sword fern (*Polystichum munitum*), salmonberry (*Rubus spectabilis*), and elderberry (*Sambucus* spp.). Riparian vegetation is found in conjunction with other habitat types at Minor Hole Road, Alder Creek, Irish Gulch, and Mallo Pass Road and includes skunk-cabbage (*Lysichiton americanum*), giant horsetail (*Equisetum telmateia*), willows (*Salix* spp.), red alder (*Alnus oregona*), wood rose (*Rosa gymnocarpa*), and California blackberry (Hardham and True 1972).

At the four sites on Manchester State Beach (one of which is referred to as the American Telephone and Telegraph communication facility), the Point Arena mountain beaver occupies stabilized sand dunes with coastal scrub components. The Manchester State Beach sites, located about 0.25 miles apart, are significantly different than the other known Point Arena mountain beaver locations because they provide less cover, fewer food plants, and poorer burrowing substrate. Although mountain beavers usually construct underground burrows, those inhabiting the coastal strand burrow under shrubby vegetation. Because temperatures are still relatively mild with minimum fluctuations owing to the marine influence, the Point Arena mountain beaver is able to tolerate these surface ambient temperatures in the coastal strand environment.

No data are available on historical population densities for the Point Arena mountain beaver. However, estimates for other mountain beaver subspecies

range from 1.4 to 2.2 individuals per acre (Neal and Borrecco 1981, Lovejoy and Black 1979) up to 9 (or 16 temporarily) animals per acre (Voth 1968).

During a 1985–1986 status survey, Steele (1986) found a total of 41 active burrow systems in 8 populations (range 2–9 animals/system). He estimated that the number of individuals per site ranged from 3 to 10 or more, for an overall subspecies population estimate of approximately 41–55 individuals. The Point Arena mountain beavers occupied roughly 24 acres of a total of approximately 83 acres of available habitat (Steele 1986). Sites vary in size from 3.7 to 19.8 acres of which about 1.5 to 8 acres were occupied by the mountain beavers (Steele 1986). By incorporating data from the 1986 and 1991 surveys (Steele, pers. comm.), the number of sites was increased to 10, the total population estimate to 100, and the total available habitat to about 100 acres.

Mountain beavers live within an extensive system of tunnels usually constructed about a foot from the surface (Steele 1986). Runways are enlarged to accommodate nests and for food storage facilities (Steele 1986). These burrows are found only in portions of the home range (Martin 1971). Limited data on the Point Arena mountain beaver indicate that an average of one or two animals is found within individual burrow systems (Steele 1986).

Radio-telemetry studies indicate that adult mountain beavers had home ranges varying from 0.01 to 0.08 acres size (mean 0.04 acres), with no significant differences between males and females (Martin 1971). Adults do not seem to range far from the burrow entrances as evidenced by a maximum recorded distance of about 140 feet (Martin 1971). During the breeding season individuals may travel outside the calculated home range. In the summer months, young mountain beavers use the burrow systems as well as ground surface to disperse from the nest (Steele 1986).

Mountain beavers appear to be solitary in their social structure, except during the breeding season, and intraspecifically defined their nests and burrows (Martin 1971). Even though home ranges may overlap, each mountain beaver is solitary when feeding (Steele 1986).

Aplodontia rufa nigra prefers to forage on succulent herbaceous plant material and the deciduous tree bark and leaves forming the understory (Steele 1982, 1986). Species frequently consumed by the mountain beaver include sword fern, cow parsnip, salal, nettle, salmonberry, and lupine. It appears that the Point Arena mountain beaver is primarily a nocturnal forager (Steele 1986).

In comparison to the abilities of many other rodents, the mountain beaver is physiologically somewhat limited in maintaining its water balance and in thermoregulating (Dolph *et al.* 1962; Greenbaum and Dicker 1963; House *et al.* 1963; Druzinsky 1983, 1984; Johnson 1971; Kinney 1971; and others). Anatomical and physiological data indicate that mountain beavers are incapable of producing a concentrated urine and, therefore, require substantial daily amounts of water. It is thought that the limited osmoregulatory abilities of the mountain beaver are responsible for its localized distribution, confining it to cool, moist areas (Nungesser and Pfeiffer 1965). Work with *Aplodontia rufa pacifica* in Oregon found that the nest and burrow system effectively mediate warm surface temperatures and seasonal changes in humidity (Johnson 1971, Kinney 1971). Further evidence stems from work on dehydration studies of mountain beavers such as the finding that *A. rufa* has a limited ability to increase reabsorption of sodium in the kidney when dehydrated (Schmidt-Nielson and Pfeiffer 1970). To excrete this excess sodium requires the loss of water via the urine. Further, there are no indications that mountain beavers can enhance evaporative water loss when heat-stressed, a method used by some mammals to maintain homeothermy (Goslow 1964, Johnson 1971, Kinney 1971).

In mountain beavers, it appears that the relatively primitive thermoregulatory ability limits the animal's surface activity to moderate temperature days. Mountain beavers can thermoregulate adequately only over a relatively narrow band of ambient temperatures (6 to 16 degrees C) which corresponds to the normal temperature range within the burrows (Kinney 1971). Animals exposed to environmental temperatures of around 30 degrees C may experience the upper thermal tolerance limit (Kinney 1971). When surface temperatures are too warm, the mountain beaver will either seek refuge in its burrow or orient its body to maximize its ability to lose body heat passively. In laboratory experiments, mountain beavers undergoing heat stress responded by decreasing metabolic and respiratory rates and by changing posture to maintain a relatively constant body temperature (Steele 1986).

Mountain beavers usually reach sexual maturity during the second year. Because it is monestrous and all females in a given population ovulate at about the same time (during a period of 5–7 weeks in mid or late winter), the breeding season is quite limited (Pfeiffer 1958). It appears that the gestation period is 28 to 30 days (Pfeiffer 1958). In late February and March, the litter is born, containing usually two to three, infrequently four, individuals (Steele 1986). Only one litter per female is produced per year (Steele 1986).

Demographic information such as age class strcuture and distribution on the Point Arena mountain beaver is sparse. Data from *Aplodontia rufa pacifica* indicate an adult sex ratio of 1.2 to 1.0 (male to female) (Lovejoy and Black 1979). Other *Aplodontia* subspecies are known to have survived for 6 or more years (Lovejoy and Black 1979).

Because of their burrowing habits and foraging in gardens, croplands, and forests, mountain beavers can cause extensive damage and are considered a nuisance in some areas (Steele 1986). For example, in certain areas of coastal Oregon and Washington, the mountain beaver is numerous and regarded as a pest (Scheffer 1929, Phillips 1982). Mountain beavers can be particularly destructive in Douglas-fir forests by clipping conifer seedlings, basal girdling saplings, and undermining roots by burrowing (Neal and Borrecco 1981). However, none of the subspecies endemic to California are known to cause substantial damage to crops, nor are they generally found in intensively managed forest tracts.

Of the 10 known populations of Point Arena mountain beaver, 3 occur totally on private land (Minor Road, Lagoon Lake, and American Telephone and Telegraph communication facility). Four others (Point Arena, Alder Creek, Irish Gulch, and Mallo Creek) are partly on private land. The State of California has jurisdiction over three of four mountain beaver locations at Manchester State Beach (California Department of Parks and Recreation), and also owns portions of Alder Creek, and highway rights-of-way on the Point Arena, Irish Gulch, and Mallo Creek sites. The other mountain beaver site at Manchester State Beach occurs on the communication facility owned by the American Telephone and Telegraph Company; this private land is encircled by State land (Manchester State Beach). On Minor Road, the County of Mendocino has a highway right-of-way.

The Point Arena mountain beaver is included as a category 1 taxon in the Service's most recent Animal Notice of Review, published in the **Federal Register** on January 6, 1989 (54 FR 554). For taxa in this category, the Service has

substantial information on hand to support the biological appropriateness of proposing to list such taxa as endangered or threatened species. A proposed rule to list this species as endangered was published in the **Federal Register** on February 15, 1991 (56 FR 6353). The comment period closed on April 16, 1991.

The Point Arena mountain beaver, with a limited distribution (i.e., 10 sites) and narrow physiological habitat tolerances, faces threats from urban development, predation, human disturbance, rodent control activities, and decreased genetic variability due to the small number of remaining individuals. This species faces an immediate threat from a proposal to erect a microwave tower within habitat occupied by the largest known population. The project as originally planned would destroy habitat used by 10 out of the 20 animals at this site. With only 100 Point Arena mountain beavers remaining, the loss of any individuals would be significant and could be potentially devastating to the subspecies. Because of the immediate threat posed by this proposal, the Service finds that good cause exists for this rule to take effect immediately upon publication in accordance with 5 U.S.C. 553(d)(3).

Summary of Comments and Recommendations

In the February 15, 1991, proposed rule, all interested parties were requested to submit comments or suggestions concerning the proposal. Appropriate State agencies, county governments, Federal agencies, scientific organizations, and other interested parties were contacted and requested to comment. Newspaper notices were published in the Independent Coast Observer and the Pacific Coast News inviting the public to comment. Comments particularly were sought concerning:

(1) Biological, commercial trade, or other relevant data concerning any threat (or lack thereof) to the Point Arena mountain beaver;

(2) The location of any additional populations of this species and why any habitat should or should not be determined to be critical habitat as provided by section 4 of the Act;

(3) Additional information concerning the range and distribution of this species; and

(4) Current or planned activities in the subject area and their possible impacts on this species.

No public hearing was requested or held. The Service received a total of 10 public comments. Nine comments were received in support of the proposed listing; one comment opposed this action. Of these, six were received from individuals in the Point Arena area; one from the Mendocino District of the Department of Parks and Recreation; one from the Department of Fish and Game, Sacramento, California; and two others from individuals outside the Point Arena area. One letter expressed concern about the low population levels of the species, and four expressed concern about the decreasing habitat availability.

Dale T. Steele, an ecologist for the California Department of Transportation, confirmed the accuracy of the information in the proposed rule concerning the geographical separation of the populations. However, from personal investigation, he now has found 10 known populations of Point Arena mountain beaver rather than the 9 previously reported. Four distinct populations are now known to occur at Manchester State Beach instead of the three reported in the proposal. Mr. Steele also estimates a population of 100 individuals rather than the 51–65 individuals stated in the proposal. The appropriate changes have been made in the final rule. These revised population estimates do not affect the need to list the species. In addition, Mr. Steele reports the finding of a dead Point Arena mountain beaver that was killed by a domestic dog. This is the first finding of this nature known to the Service. Mr. Steele also noted that Point Arena mountain beaver burrows are typically closer to one foot in depth rather than several inches, as stated in the proposed rule. Again, the appropriate change has been made in the final rule.

Another commenter expressed concern about the impacts of several construction projects on Point Arena mountain beaver in the area—the Point Arena wharf project on the bank north of the Point Arena creek, and the construction of at least three gravel plants in the area.

The Service received one comment opposing listing, which claimed that the populations of this subspecies have increased considerably during the last 25 years and that it is not likely to decline. The commenter also stated that the species does not inhabit moist low land areas and that cattle tend to avoid areas used by the mountain beaver. No documentation was submitted to support these statements. The best scientific and commercial information available to the Service does not support this position.

Summary of Factors Affecting the Species

After a thorough review and consideration of all information available, the Service has determined that the Point Arena mountain beaver (*Aplodontia rufa nigra*) should be classified as an endangered species. Procedures found at section 4(a)(1) of the Endangered Species Act (16 U.S.C. 1531 *et seq.*) and regulations (50 CFR part 424) promulgated to implement the listing provisions of the Act were followed. A species may be determined to be an endangered or threatened species due to one or more of the five factors described in section 4(a)(1). These factors and their application to the Point Arena mountain beaver (*Aplodontia rufa nigra*) are as follows:

A. The Present or Threatened Destruction, Modification, or Curtailment of Its Habitat or Range

Although there are no estimates available on the amount of historical habitat for the Point Arena mountain beaver, given the amount of habitat that already has been developed for urban and agricultural purposes, it is likely that substantial habitat loss has occurred. Livestock production, dating from the time of introduction of cattle by the Spanish, may well have substantially modified historical *Aplodontia* habitats (Steele 1986). Earlier known Point Arena mountain beaver populations were situated near farming or ranching activities. Livestock grazing and brush clearing have eliminated much coastal scrub habitat in the area (Steele 1986). Moreover, cattle have stepped on *Aplodontia* burrows and destroyed runways (Steele 1986). Of the 10 presently known populations, 5 are found near agricultural or ranch land and are subject to continued impacts from these activities (Steele 1986).

Construction of private and county roads has resulted in the loss of habitat. New home construction at Irish Beach and in Irish Creek upslope from the mountain beaver population has affected the habitat quality. Loss of habitat, dumping of trash, and an increase in predation by feral and non-feral house pets may have reduced the Point Arena mountain beaver population at Irish Creek. About 150 homes have been completed as of 1991, as part of a planned development of 1,091 homes (Steele 1986; Sharon Fraser, Irish Beach Rental Agency, pers. comm. 1991). An adjunct part of this project included constructing a water diversion system at Mallo Creek to supply the domestic water requirements of the development.

Recently the Coastal Commission approved the withdrawal of up to 50 cubic feet per second of water from Mallo Creek for residential use at the Irish Beach subdivision (B. Noah Tilghman, California Coastal Commission, letter dated June 22, 1988). Such a water diversion has the potential to adversely affect the mountain beaver by reducing the amount and quality of available habitat. Ancillary facilities including a market, motel, and offices also were tentatively planned for construction (Steele 1986). The latest revision to the Mendocino County Land Use Plan shows increasing housing developments, creating a potential for additional indirect and direct disturbance to the mountain beavers in the Irish Creek area.

A subdivision also has been planned for Lagoon Lake. Although the roads are now in, only a couple of homes have been built there. However, if development proceeds as originally envisioned, homes could be built up to several hundred feet away from the Point Arena mountain beaver site at Lagoon Lake. Some of the lots that are part of the Hunter's Lagoon project at Lagoon Lake have been purchased by the California Department of Parks and Recreation as additional land for Manchester State Beach (Dave Barlett, California Department of Parks and Recreation, pers. comm.). With such close urban development, the mountain beavers will be subject to increased human disturbance and probably augmented predation pressure by house pets. Urban development in the Lagoon Lake area may adversely modify existing mountain beaver habitat and reduce the number of animals.

The Irish Beach-to-Manchester Alternative Coastal Trail has been proposed to provide non-vehicular beach assess at Irish Beach, Alder Creek Beach Road, Kinney Road, and Stoneboro Road. This project includes construction of a parking area, construction of an interpretative center, and establishing access to the proposed trail at both Irish Creek and Alder Creek. This would increase human disturbance to the mountain beaver population and result in a reduction in habitat quality. There is no information available to indicate that the Point Arena mountain beaver can tolerate this degree of human disturbance. However, even a limited effect on the mountain beaver's reproductive success or mortality rates from predation could extirpate this population of approximately five animals.

It is likely that there has been previous habitat loss at the American Telephone and Telegraph communication facility resulting from construction and secondary impacts from use of the facility. It is not known how large this population was prior to construction of the communication facility; however, the present population of approximately 20 animals is now threatened by the proposed construction of a microwave tower. The proposed project would involve the excavation of a portion of this 3.7 acre site (Steele, pers. comm. 1991).

B. Overutilization for Commercial, Recreational, Scientific, or Educational Purposes

Overutilization is not known to be a problem. However, the very low number of individuals at these isolated remaining sites makes each population vulnerable to extirpation from collection for scientific or other purposes.

C. Disease or Predation

Predation by domestic and feral dogs, as well as cats, is a mortality factor for mountain beaver, particularly in sites located adjacent to existing urban and agricultural developments such as at Irish Gulch, Alder Creek, and Point Arena. This conclusion is supported by the discovery of a Point Arena mountain beaver which was killed by a domestic dog (Steele, pers. comm. 1991). The impact of this predation pressure on such small populations has the potential to become critical, since one determined predator could seriously impact, and possibly even extirpate, any of the remaining populations.

D. Inadequacy of Existing Regulatory Mechanisms

The California Department of Fish and Game considers the Point Arena mountain beaver a "Species of Special Concern" and is in the process of preparing the documentation to request that the State Fish and Game Commission designate this taxon as endangered. Although the California Department of Fish and Game requires special authorization (either a collecting permit or memorandum of understanding) to collect this subspecies for scientific purposes, there is no legal status to protect its habitat. Furthermore, because the Point Arena mountain beaver is classified by the State of California as a non-game animal, farmers and/or other landowners may legally take the animals without obtaining a permit if the animals are deemed destructive to property such as crops.

All known Point Arena mountain beaver populations are within the Coastal Zone and, therefore, subject to the provisions of the California Coastal Act (California State Public Resources Code, Division 20; California Coastal Act of 1976). The primary goal of the Coastal Act is to preserve and protect natural resources, prime agricultural land, and timber land. The Coastal Commission is authorized to approve only those activities that are dependent on these resources. However, activities such as dredging, channelization, construction of pipelines, transmission lines, water diversions, and existing agricultural operations may be permitted. Local coastal plans must be developed by coastal cities and counties and include a land use plan, zoning ordinances, and zoning maps. A land use plan has been developed for the Inverson Planning Area (Land Use Plan: Mallo Pass Creek to Inverson Road). This planning area plus a small section of the Navarro River to Mallo Pass Creek Planning Area includes the entire known distribution of the Point Arena mountain beaver. However, this plan does not contain any specific actions designed to protect the mountain beaver or its habitat.

The Coastal Act and Mendocino County Land Use Plan provide indirect habitat protection to the mountain beaver. However, such land use plans are not required to minimize activities adjacent to sensitive habitat such as construction of housing tracts, diversion or retention of drainage waters, increased human intrusion, or adverse impacts by livestock. Further, mountain beavers are not presently protected from development activities or other potentially adverse impacts because there are no regulations or guidelines that protect the animal or its habitat.

E. Other Natural and Manmade Factors Affecting Its Continued Existence

Construction of roads may reduce or possibly eliminate the ability of young Point Arena mountain beavers to successfully disperse from natal areas. Point Arena mountain beavers may be killed by cars as they attempt to cross roads although none have been recorded to date. Both the Minor Hole Road and Alder Creek populations have burrows near and under roadways (Steele 1986), thus increasing the likelihood that mountain beavers will wander onto the pavement. The nocturnal habits of the animal make their attempts at road crossing even more hazardous.

Rodent control by trapping and baiting is still fairly common along the Mendocino coast and often is associated with residential and family garden practices (Steele 1986). Baits laced with strychnine or anticoagulants are the

most widely used (Steele 1986). Also, wet spots and seeps sometimes are treated with applications of copper sulfate to control sheep liver fluke (Steele 1986). Although there is no information available assessing the impacts of such programs on the Point Arena mountain beaver, these activities represent a potential threat. Maintenance workers at the Kampgrounds of America facility near the mountain beaver site at Point Arena placed poison bait and traps out to kill the mountain beavers they mistakenly identified as gophers. It is unknown if any Point Arena mountain beavers succumbed; however, this demonstrates the threat that rodent control activities present and also how an act of vandalism through trapping or application of poisoned bait could severely impact the species. Although no such vandalism has been reported, the potential exists to extirpate these small, disjunct populations.

Several exotic plants occur in Point Arena mountain beaver habitat, including gorse (*Ulex europaeus*), broom (*Cytisus* spp.), pampas grass (*Cortaderia selloana*), and others. In some areas these species have become established and relatively widespread, thereby reducing the quality and quantity of the native ecosystem of the Point Arena mountain beaver.

Because the remaining Point Arena mountain beavers have a localized distribution, they are extremely vulnerable to catastrophic events such as fire, flooding, disease, drought, or earthquake. Such events could eliminate all individuals or further depress the already low population numbers to a point where they could not recover.

Additionally, the population numbers are now sufficiently low so that the effects of inbreeding depression (whereby closely related individuals breed) may result in the expression of a deleterious gene in the population. Individuals possessing such deleterious alleles are less likely to effectively cope with the environmental conditions or to adapt to environmental changes, even relatively minor ones. Moreover, small populations (especially those with less than 50 individuals), are subject to the effects of genetic drift. This means that by chance events the genetic variability eventually will decline in small populations, thus limiting the flexibility of a population to respond to environmental changes. The effects of genetic drift and inbreeding depression are genetically similar. Individual populations of mountain beavers number from about 3 to 20 animals, and, therefore, the genetic effects of small size are likely to be a significant factor in the taxon's long-term survivability.

Small populations may also suffer from the effects of habitat fragmentation. Subdivision of habitat into smaller blocks of land often is the result of human-related activities such as fire, water diversion, livestock grazing, road construction, and urban development and serves to exacerbate the segregation of the extant populations. Habitat fragmentation, by further reducing population size, increases the probability of genetic drift and inbreeding depression that may result in less vigorous and adaptable populations of mountain beavers.

The Service has carefully assessed the best scientific and commercial information available regarding the past, present, and future threats faced by this species in determining to make this rule final. Based on this evaluation, the preferred action is to list the Point Arena mountain beaver (*Aplodontia rufa nigra*) as endangered. The limited distribution (10 sites), narrow physiological habitat tolerances, small overall population number, and threats of habitat loss from urban development, pesticide application, predation by feral animals as well as house pets, and human disturbance make endangered status warranted in lieu of threatened status. Given these threats and with only about 100 individuals remaining on about 100 acres of habitat, the taxon is now facing extinction. Critical habitat is not being designated for reasons enumerated under the Critical Habitat section.

Critical Habitat

Section 4(a)(3) of the Act, as amended, requires that to the maximum extent prudent and determinable, the Secretary designate critical habitat concurrently with determining a species to be endangered or threatened. Because the Point Arena mountain beaver now occurs in small populations (3 to 20 individuals per site) and is limited to 10 known sites with a restricted distribution of about 100 acres, any acts of vandalism, such as trapping, poisoning, or collection, could seriously reduce the outstanding numbers of individuals and cause irreparable harm. Further, interested parties have been notified of the status of the taxon including landowners as well as private, State, city, county, and Federal agencies. Therefore, because the concerned landowners already have been notified and any proposal for critical habitat requires publication of precise location maps in the **Federal Register** which could result in vandalism or collection, the Service has determined that designation of critical habitat would not be prudent.

Available Conservation Measures

Conservation measures provided to species listed as endangered or threatened under the Endangered Species Act include recognition, recovery actions, requirements for Federal protection, and prohibitions against certain activities. Recognition through listing encourages and results in conservation actions by Federal, State, and private agencies, groups, and individuals. The Endangered Species Act provides for possible land acquisition and cooperation with the States and requires that recovery actions be carried out for all listed species. Potential recovery actions could include establishing a buffer around each population site and excluding further urban or other development within this zone of about 100 acres of total habitat or within adjacent potential habitat; installing protective fencing; implementing cooperative agreements to manage the species; and restricting pesticide application. Such actions may be initiated following listing. The protection required of Federal agencies and the prohibitions against taking and harm are discussed, in part, below.

Section 7(a) of the Act, as amended, requires Federal agencies to evaluate their actions with respect to any species that is proposed or listed as endangered or threatened and with respect to its critical habitat, if any is being designated. Regulations implementing this interagency cooperation provision of the Act are codified at 50 CFR part 402. Section 7(a)(2) of the Act requires Federal agencies to ensure that activities they authorize, fund, or carry out are not likely to jeopardize the continued existence of listed species or to destroy or adversely modify its critical habitat. If a Federal action may affect a listed species or its critical habitat, the responsible Federal agency must enter into formal consultation with the Service. Federal involvement may occur if the Federal Highways Administration provides funding to the California Department of Transportation (Caltrans) to construct new highways or repair existing ones. The American Telephone and Telegraph Company proposed to install a subterminal fiber optics cable in a six-foot deep trench as part of its submarine lightguide cable installation project under its communication facility. In consideration of the mountain beaver on the site, the proposal was modified to bore the cable through the site rather than excavate a six-foot deep trench. If hydroelectric

facilities are proposed for the streams within or adjacent to Point Arena mountain beaver habitat, a Federal Energy Regulatory Commission permit will be required that may incorporate measures to protect the mountain beaver and its habitat. No such hydroelectric facilities are known to be planned.

The Act and its implementing regulations found at 50 CFR 17.21 set forth a series of general prohibitions and exceptions that apply to all endangered wildlife. These prohibitions, in part, make it illegal for any person subject to the jurisdiction of the United States to take (including harass, harm, pursue, hunt, shoot, wound, kill, trap, capture, collect, or attempt any such conduct), import or export, transport in interstate or foreign commerce in the course of commercial activity, or sell or offer for sale in interstate or foreign commerce any listed species. It also is illegal to possess, sell, deliver, carry, transport, or ship any such wildlife that has been taken illegally. Certain exceptions apply to agents of the Service and State conservation agencies.

Permits may be issued to carry out otherwise prohibited activities involving endangered wildlife species under certain circumstances. Regulations governing permits are at 50 CFR 17.22 and 17.23. Such permits are available for scientific purposes, to enhance the propagation or survival of the species, and/or for incidental take in connection with otherwise lawful activities. In some instances, permits may be issued during a specified period of time to relieve undue economic hardship that would be suffered if such relief were not available.

National Environmental Policy Act

The Service has determined that an Environmental Assessment, as defined under the authority of the National Environmental Policy Act of 1969, need not be prepared in connection with regulations adopted pursuant to section 4(a) of the Endangered Species Act of 1973, as amended. A notice outlining the Service's reasons for this determination was published in the **Federal Register** on October 25, 1983 (48 FR 49244).

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Authors

The authors of this rule are Mr. Michael Horton and Dr. Kathleen E. Franzreb, Sacramento Field Office, U.S. Fish and Wildlife Service, 2800 Cottage Way E–1823, Sacramento, California 95825–1846, (916/978–4866 or FTS 460–4866).

List of Subjects in 50 CFR Part 17

Endangered and threatened species, Exports, Imports, Reporting and recordkeeping requirements, and Transportation.

Final Regulation Promulgation

Accordingly, part 17, subchapter B of chapter I, title 50 of the Code of Federal Regulations, is amended as set forth below:

PART 17—[AMENDED]

1. The authority citation for part 17 continues to read as follows:

Authority: 16 U.S.C. 1361–1470; 16 U.S.C. 1531–1544; 16 U.S.C. 4201–4245; Pub. L. 99–625, 100 Stat. 3500; unless otherwise noted.

2. Amend § 17.11(h) by adding the following, in alphabetical order under Mammals, to the List of Endangered and Threatened Wildlife:

§ 17.11 Endangered and threatened wildlife.

* * * * *

(h) * * *

Species		Historical range	Vertebrate population where endangered or threatened	Status	When listed	Critical habitat	Special rules
Common name	Scientific name						
Mammals:							
•	•	•	•	•	•	•	
Beaver Point Arena mountain	*Aplodontia rufa nigra*	U.S.A. (CA)	Entire	E	454	NA	NA
•	•	•	•	•	•	•	

Dated: December 4, 1991.

Richard N. Smith,

Acting Director, U.S. Fish and Wildlife Service.

[FR Doc. 91-29733 Filed 12-11-91; 8:45 am]

BILLING CODE 4310-55-M

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 663

[Docket No. 910763-1212]

Pacific Coast Groundfish Fishery

AGENCY: National Marine Fisheries Service (NMFS), NOAA, Commerce.

ACTION: Notice of rescission of closure.

SUMMARY: NOAA announces that the prohibition on the processing of Pacific whiting at sea (by motherships) previously announced to take effect at 1200 hours (local time) November 22, 1991 (56 FR 58321) has been rescinded until further notice. This action is authorized by the regulations at 50 CFR 663.23(b)(3) implementing the Pacific Coast Groundfish Management Plan (FMP), and is intended to provide for full utilization of the Pacific whiting resource in 1991.

EFFECTIVE DATES: Effective noon (local time) November 22, 1991, until 2400 hours (local time) December 31, 1991, unless modified, superseded, or rescinded.

ADDRESSES: Rolland A. Schmitten, Director, Northwest Region, National Marine Fisheries Service, 7600 Sand Point Way NE., Bldg. 1, Seattle, WA 98115; or E. Charles Fullerton, Director, Southwest Region, National Marine Fisheries Service, 300 South Ferry Street, Terminal Island, CA 90731.

FOR FURTHER INFORMATION CONTACT: William L. Robinson at (206) 526-6140; or Rodney R. McInnis at (213) 514-6202.

SUPPLEMENTARY INFORMATION: In October 1991, NMFS determined that 7,000 metric tons (mt) of the 1991 Pacific whiting quota of 228,000 mt. off Washington, Oregon, and California would not be fully utilized unless made available for processing at sea. Consequently, on November 17, 1991 (56 FR 58321; November 19, 1991), the 7,000 mt of Pacific whiting that was determined to be surplus to shoreside processing needs was made available for processing at sea in the exclusive economic zone (EEZ). Further processing at sea initially was to be prohibited on noon November 22, 1991, but the date could be adjusted by the Regional Director if needed to avoid exceeding, or to fully utilize, the 7,000 mt.

Bad weather prevented productive fishing, and the cumulative catch through November 21, 1991, was approximately 2,400 mt (34 percent of the 7,000 mt release). For this reason, the Regional Director determined that the closure scheduled at noon, November 22, 1991, should be rescinded until the end of the fishing year December 31, 1991, or until further notice. Taking and retention of Pacific whiting by vessels that also process fish remains prohibited. Actual notice was provided to participants in the fishery and the general public in the community through personal communications with representatives of the various companies involved, Notice to Mariners, and a NMFS news release.

Secretarial Action. For the reasons stated above, the Secretary of Commerce announces that:

At sea processing of Pacific whiting in the Fishery Management Area may continue after 1200 hours, November 22, 1991, through December 31, 1991, or until further notice by the Regional Director.

Classification

The determination to rescind the prohibition on at-sea processing of Pacific whiting for the rest of the fishing year or until further notice is based on the most recent data available. The aggregate data upon which the determination is based are available for public inspection at the Office of the Director, Northwest Region (see Addresses) during business hours.

This action is taken under the authority of 50 CFR 663.23(b)(3), and is in compliance with Executive Order 12291.

An environmental assessment/regulatory impact review (EA/RIR) was prepared for the authorizing regulations. The environmental impacts of the action taken in this notice were considered in the EA/RIR. Therefore this action is categorically excluded from the National Environmental Policy Act requirements to prepare an environmental assessment in accordance with paragraph 6.02c.3 of NOAA Administrative Order 216-6 because this action is within the scope of the authorizing rule and its EA/RIR.

List of Subjects in 50 CFR Part 633

Administrative practice and procedure, Fisheries, Fishing, Reporting and recordkeeping requirements.

Authority: 16 U.S.C. 1801 *et seq.*

Dated: December 6, 1991.

Richard H. Schaefer,

Director of Office of Fisheries, Conservation and Management, National Marine Fisheries Service.

[FR Doc. 91-29654 Filed 12-6-91; 4:42 pm]

BILLING CODE 3510-22-M

Proposed Rules

Federal Register
Vol. 56, No. 239
Thursday, December 12, 1991

This section of the FEDERAL REGISTER contains notices to the public of the proposed issuance of rules and regulations. The purpose of these notices is to give interested persons an opportunity to participate in the rule making prior to the adoption of the final rules.

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

24 CFR Part 214

[Docket No. N-91-3359; FR-2753-N-02]

Office of the Assistant Secretary for Housing-Federal Housing Commissioner; Housing Counseling Program: Announcement of Toll-Free Telephone Number

AGENCY: Office of the Assistant Secretary for Housing-Federal Housing Commissioner, HUD.

ACTION: Notice.

SUMMARY: This Notice announces the Department's toll-free telephone number by which the public may obtain a list of HUD-approved housing counseling agencies in their area.

FOR FURTHER INFORMATION CONTACT: Joseph C. Bates, Director, Single Family Servicing Division, room 9178, 451 Seventh Street, SW., Washington, DC 20410-0500. Telephone: (202) 708-1672. Hearing- or speech-impaired individuals may call the Office of Housing's TDD number (202) 708-4594. (These are not toll-free numbers.)

SUPPLEMENTARY INFORMATION: On November 15, 1991 (56 FR 58158), the Department published in the **Federal Register** a proposed rule that would codify the procedures and requirements governing the Department's housing counseling program. (To date the housing counseling program has been administered under HUD Housing Counseling Handbook No. 7610.1, Rev. September 1990.) In the preamble to the proposed rule, the Department advised that section 577 of the National Affordable Housing Act (Pub. L. 101-625, approved November 28, 1990) authorized the Department, to the extent of amounts approved in appropriations acts, to enter into an agreement with a private entity which would operate a toll-free number by which a person could obtain a list of the HUD-approved agencies that serve the area in which the person resides. The Department stated that once the toll-free number is operational, it would be announced by separate notice in the **Federal Register**.

The purpose of this notice is to announce this toll-free number. The number is: 800-733-3238.

Dated: December 5, 1991.

Grady J. Norris,

Assistant General Counsel for Regulations.

[FR Doc. 91-29630 Filed 12-11-91; 8:45 am]

BILLING CODE 4210-27-M

DEPARTMENT OF THE INTERIOR

Minerals Management Service

30 CFR Part 206

RIN 1010-AB29

Amendment of Valuation Benchmarks in Gas Regulations

AGENCY: Minerals Management Service (MMS), Interior.

ACTION: Proposed rule.

SUMMARY: The Minerals Management Service (MMS) is proposing to amend its regulations governing the valuation of gas produced from Federal and Indian leases. The proposed amendments would modify the first benchmark for valuing unprocessed gas, residue gas, and gas plant products not sold pursuant to an arm's-length contract. The MMS is also proposing to add an additional benchmark to the sections on processed and unprocessed gas. These changes are proposed to make the benchmarks easier for royalty payors to apply in valuing gas production, and to provide more certainty to the process.

DATES: Comments must be received on or before January 13, 1992.

ADDRESSES: Written comments, suggestions, or objections regarding the proposed amendments should be mailed to the Minerals Management Service, Royalty Management Program, Rules and Procedures Branch, Denver Federal Center, Building 85, P.O. Box 25165, Mail Stop 3910, Denver, Colorado 80225, Attention: Dennis C. Whitcomb.

FOR FURTHER INFORMATION CONTACT: Dennis C. Whitcomb, Chief, Rules and Procedures Branch, (303) 231-3432 or (FTS) 326-3432.

SUPPLEMENTARY INFORMATION: The principal authors of this proposed rule are Scott Ellis and John L. Price of the Royalty Valuation and Standards Division, and Donald T. Sant, Deputy Associate Director for Valuation and Adult, Royalty Management Program, MMS.

I. Background

On January 15, 1988, MMS published new gas valuation regulations in the **Federal Register** (53 FR 1230) that became effective March 1, 1988. Before adopting the final regulations, MMS received comments on a Notice of Proposed Rulemaking published in the **Federal Register** on February 13, 1987 (52 FR 4732), a First Further Notice of Proposed Rulemaking published on August 17, 1987 (52 FR 30776), and a Second Further Notice of Proposed Rulemaking published on October 23, 1987 (52 FR 39792). In addition, public hearings were held on the proposed gas valuation regulations. Comments that were received in response to the **Federal Register** Notices and at the public hearings were considered in the adopted regulations.

The final valuation regulations establish royalty values based on market values determined by the supply/demand interaction through arm's-length transactions. To ensure that the proper royalty value is established in those situations where gas production is not sold pursuant to arm's-length transactions, a benchmark system was developed. The determination of value under the benchmark system is based primarily upon values established under comparable arm's-length transactions occurring in the field or area in question. In the absence of comparable arm's-length transactions, the best available gas sales data relevant to the situation or a net-back procedure is used to establish value. See paragraph (c) of 30 CFR 206.152 and 206.153.

The MMS received numerous comments on whether or not to adopt a benchmark system to value gas production not sold pursuant to arm's-length contracts and what criteria would be used in each benchmark to establish gas value. Industry generally supported the concept of comparing the values under non-arm's-length transactions with values under comparable arm's-length contracts. Industry also supported additional benchmarks that were based upon market-oriented

factors. The additional benchmarks were said to be necessary in instances where comparable arm's-length transactions did not exist. State and Indian commenters generally supported the benchmark system for determining gas value in other-than-arm's-length situations, but preferred to establish value based on the highest price paid in the field.

One State commenter did not believe that the benchmark system was fair to the royalty owner: "It would be unreliable because the standards are vague, subjective, and subject to abuse * * *." One industry commenter partially agreed with this assessment, relating that although the proposed benchmark system gives producers more confidence in arriving at value, it falls short of providing a method to determine an exact royalty amount when royalty is due.

Another industry commenter during the rulemaking process suggested that the wording of the benchmark criteria should be amended to avoid ambiguity in the application: "As currently written, these provisions are unclear as to how royalty should be valued if the proceeds under the non-arm's-length contract is not 'equivalent' to the proceeds of the * * * arm's-length contracts of other lessees in the field." The commenter further stated that he understood the intent of the proposed regulations was that the proceeds under the referenced arm's-length contract would be used to set royalties, but the regulation did not expressly so state. The commenter observed: "* * * as presently worded, the regulation would suggest that if the non-arm's-length contract was not 'equivalent,' then the next criterion in the hierarchy would apply. This ambiguity should be removed."

In the final regulations, MMS adopted as the first benchmark (paragraph (c)(1) of 30 CFR 206.152 and 206.153) the lessee's gross proceeds received under its non-arm's-length transaction if they are equivalent to the gross proceeds received under comparable arm's-length contracts for like-quality production in the same field or area. The criteria to be considered in defining comparable contracts are also outlined in the above-referenced sections. However, since the adoption of the revised regulations, numerous questions have been raised as to the interpretation of the first benchmark. These questions have generally addressed two issues:

(a) How does the lessee, or MMS, determine the acceptability of the lessee's gross proceeds under its non-arm's-length contract when there are numerous comparable arm's-length contracts with a range of proceeds passing between the parties?

(b) How does the lessee, or MMS, determine the acceptability of the lessee's gross proceeds under its non-arm's-length contract when there are no comparable arm's-length contracts for the sale of like-quality production between parties not affiliated with the lessee?

The Department of the Interior also was sued by a group of affiliated producers over, among other things, the final regulations' treatment of valuation under non-arm's-length contracts. *ANR Production Co., et al.* v. *Hodel*, Civ. No. CV 88–0045 (W.D. La., filed Jan. 14, 1988).

Lessees have discovered that many arm's-length contracts are comparable to their non-arm's-length contracts from the standpoint of time of execution, market served, duration, and volume and quality of gas. However, a range of prices commonly exists for the comparable arm's-length contracts. Lessees are uncertain if MMS will view their gross proceeds under the non-arm's-length contract as acceptable, for royalty valuation purposes, if they are greater than or equal to the gross proceeds paid under at least one comparable arm's-length contract. To illustrate, assume there are 10 arm's-length contracts in the field comparable to the lessee's non-arm's-length contract except that each of the 10 contracts has a different price. Assume further that the non-arm's length contract gross proceeds are equal to the proceeds under the second to the lowest arm's-length contract. The lessees are uncertain whether MMS will accept the non-arm's-length gross proceeds as value.

Since issuance of the regulations, numerous questions have been raised as to how MMS will enforce the first benchmark. The questions have identified the need to further clarify the intentions of MMS in this regard. Therefore, MMS is proposing to modify the benchmark system by clarifying the first benchmark and establishing four benchmarks where there are now only three.

II. Proposed Amendments

The MMS is proposing to amend paragraph (c)(1) of 30 CFR 206.152 and 206.153 and to add an additional benchmark to both sections.

In recognition of the realities of the gas marketplace, it is being proposed that the gross proceeds accruing to a lessee under its non-arm's-length contract would be accepted as value if they are not less than the gross proceeds derived from or paid under the lowest priced available comparable arm's-length contract between parties both of whom are not affiliated with the lessee for similarly situated production.

Available contracts would mean contracts in the possession of the lessee or MMS. This would not require knowledge of all contracts in the field, or, for processed gas, for a particular plant, but it would require MMS to index and catalogue all contracts in its possession. Limiting the range to arm's-length contracts where both parties are not affiliated with the lessee protects the lessor's interest if a lessee attempts to have the gross proceeds under its non-arm's-length contracts accepted on the basis of an arm's-length contract involving the lessee (or its affiliate) which was entered into for the purpose of creating a low-priced, comparable arm's-length contract. Therefore, under this first benchmark, the gross proceeds accruing to a lessee under its non-arm's-length contract would not be accepted as value if they are less than the gross proceeds derived from or paid under all available comparable arm's-length contracts between parties, both of whom are not affiliated with the lessee, for like-quality production.

The MMS also recognizes, however, that there may be some instances where there are no comparable arm's-length contracts in the field or area, or plant, between parties not affiliated with the lessee. For example, in a field there may be only one pipeline purchaser who happens to be affiliated with 1 of 10 lessees. Even though there would be many arm's-length contracts between that pipeline purchaser and the other nine lessees, the affiliated lessee could not use the proposed first benchmark. Therefore, it is being proposed that a new, second benchmark be added. This benchmark would provide that the lessee's gross proceeds under its non-arm's length contract will determine the value of the production if they are not less than the gross proceeds derived from any available comparable arm's length contract between sellers who are not affiliated with the lessee and purchasers who are affiliated with the lessee for sales or other dispositions of like-quality production in the same field (or plant) or, if necessary to obtain a reasonable sample, from the same area (or nearby plants). The MMS believes that the lessors' interests would be protected in this situation because the sellers under the comparable contracts must be unaffiliated with the lessee. Lessees would be able to use this second benchmark only when the first benchmark cannot be applied; i.e., when there are no comparable contracts

between persons unaffiliated with the lessee. As in the first benchmark being proposed, if the lessee cannot demonstrate that its gross proceeds are not less than the gross proceeds derived from comparable arm's-length contracts identified under this second benchmark, its gross proceeds would not be acceptable as value under this second benchmark.

If neither the proposed first or second benchmark were applicable, then the gas production would be required to be valued under the third benchmark which is not being proposed for change.

The MMS believes that the proposed amendments will provide the lessee with a clarified regulation that reflects the realities of the marketplace. The proposed rule also is consistent with MMS's policy for implementing the first benchmark under the existing regulations. The proposed amendments are not expected to change royalty collections. The MMS specifically would like comments on whether the proposed regulatory language accomplishes the clarification as described in this preamble.

The proposed amendments do not change the requirement in 30 CFR 206.152(a)(3)(i) and 206.153(a)(3)(i) that for any Indian lease which provides that the Secretary of the Interior may consider the highest price paid or offered for a major portion of production in determining value, the value for royalty purposes will be the higher of the major portion value or the value determined under the benchmarks.

III. Requested Comments on Selected Issues

The policy of the Department is, whenever practicable, to afford the public an opportunity to participate in the rulemaking process. Accordingly, interested persons may submit written comments, suggestions, or objections regarding the proposed amendment to the location identified in the **ADDRESSES** section of this preamble. Comments must be received on or before the day specified in the **DATES** section of this preamble.

Finally, MMS is seeking comments on the proposed factors in evaluating the comparability of arm's-length contracts in paragraph (c)(1) of 30 CFR 206.152 and 206.153. The MMS specifically would like comments on whether these factors provide adequate information for evaluation and whether other factors for comparability should be used in the evaluation.

IV. Procedural Matters

Executive Order 12291 and the Regulatory Flexibility Act

This rule simplifies and clarifies existing regulations, with no change in the administrative requirements or burdens placed upon small business entities. Therefore, the Department has determined that this document is not a major rule under Executive Order 12291 and certifies that this document will not have a significant economic effect on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 et seq.).

Executive Order 12630

Because this rulemaking clarifies existing regulations, the Department certifies that the rule does not represent a governmental action capable of interference with constitutionally protected property rights. Thus, a Takings Implication Assessment need not be prepared pursuant to Executive Order 12630, "Government Action and Interference with Constitutionally Protected Property Rights."

Paperwork Reduction Act of 1980

This rule does not contain information collection requirements that require approval by the Office of Management and Budget under 44 U.S.C. 3501 et seq.

National Environmental Policy Act of 1969

It is hereby determined that this rulemaking does not constitute a major Federal action significantly affecting the quality of the human environment and a detailed statement pursuant to section 102(2)(C) of the National Environmental Policy Act of 1969 [42 U.S.C. 4332(2)(C)] is not required.

List of Subjects in 30 CFR Part 206

Coal, Continental shelf, Geothermal energy, Government contracts, Indian lands, Mineral royalties, Natural gas, Petroleum, Public lands-mineral resources, Reporting and recordkeeping requirements.

Dated: May 28, 1991.

David O'Neal,

Assistant Secretary—Land and Minerals Management.

For the reasons set out in the preamble, 30 CFR part 206 is proposed to be amended as follows:

PART 206—PRODUCT VALUATION

1. The authority citation for part 206 continues to read as follows:

Authority: 5. U.S.C. 301 et seq.; 25 U.S.C. 396 et seq.; 25 U.S.C. 396a et seq.; 25 U.S.C. 2101 et seq.; 30 U.S.C. 181 et seq.; 30 U.S.C. 351 et seq.; 30 U.S.C. 1001 et seq.; 30 U.S.C. 1701 et seq.; 31 U.S.C. 9701; 43 U.S.C. 1301 et seq.; 43 U.S.C. 1331 et seq.; and 43 U.S.C. 1801 et seq.

2. Paragraph (c) of § 206.152 under subpart D (Federal and Indian Gas) is revised to read as follows:

§ 206.152 Valuation standards—unprocessed gas.

* * * * *

(c) The value of gas subject to this section which is not sold pursuant to an arm's-length contract shall be the reasonable value determined in accordance with the first applicable of the following methods:

(1) The gross proceeds accruing to the lessee pursuant to a sale under it's non-arm's-length contact (or other disposition other than by an arm's-length contract) provided that those gross proceeds are not less than the gross proceeds derived from or paid under the lowest priced available arm's-length contract between persons not affiliated with the lessee (the "minimum value"). Available contracts are those contracts in the possession of the lessee or Minerals Management Service (MMS). In evaluating the comparability of arm's-length contracts for the purposes of these regulations, the following factors shall be considered: Field or area, time of execution, duration, market or markets served, terms, quality of gas, volume, and such other factors as may be appropriate to reflect the value of the gas;

(2) Where no comparable arm's-length contracts exist between persons not affiliated with the lessee, the gross proceeds accruing to the lessee pursuant to a sale under its non-arm's-length contract (or other disposition other than by an arm's-length contract) provided that those gross proceeds are not less than the gross proceeds derived from or paid under the lowest-priced available comparable arm's-length contract between sellers not affiliated with the lessee and purchasers affiliated with the lessee (the "minimum value"). Available contracts are those contracts in the possession of the lessee or MMS. In evaluating the comparability of arm's-length contracts for the purposes of these regulations, the following factors shall be considered: field or area, time of execution, duration, market or markets served, terms, quality of gas, volume, and such other factors as may be appropriate to reflect the value of the gas;

(3) A value determined by consideration of other information relevant in valuing like-quality gas, including gross proceeds under arm's-

length contracts for like-quality gas in the same field or nearby fields or areas, posted prices for gas, prices received in arm's-length spot sales of gas, other reliable public sources of price or market information, and other information as to the particular lease operation or the saleability of the gas; or

(4) A net-back method or any other reasonable method to determine value.

* * * * *

3. Paragraph (c) § 206.153 under subpart D is revised to read as follows:

§ 206.153 Valuation standards—processed gas.

* * * * *

(c) The value of residue gas or any gas plant product which is not sold pursuant to an arm's-length contract shall be the reasonable value determined in accordance with the first applicable of the following methods:

(1) The gross proceeds accruing to the lessee pursuant to a sale under its non-arm's-length contract (or other disposition other than by an arm's-length contract) provided that those gross proceeds are not less than the gross proceeds derived from or paid under the lowest prices available comparable arm's-length contract between persons not affiliated with the lessees (the "minimum value"). Available contracts are those contracts in the possession of the lessee or MMS. In evaluating the comparability of arm's-length contracts for the purposes of these regulations, the following factors shall be considered: Same plant or nearby plants, time of execution, duration, market or markets served, terms, quality of residue gas and gas plant products, volume, and such other factors as may be appropriate to reflect the value of the residue gas and gas plant products;

(2) Where no comparable arm's-length contracts exists at the plant or nearby plant between persons not affiliated with the lessee, the gross proceeds accruing to the lessee pursuant to a sale under its non-arm's-length contract (or other disposition other than by an arm's-length contract) provided that those gross proceeds are not less than the gross proceeds derived from or paid under the lowest priced available comparable arm's-length contract between sellers not affiliated with the lessee and purchasers affiliated with the lessee (the "minimum value"). Available contracts are those contracts in the possession or the lessee of MMS. In evaluating the comparability of arm's-length contracts for the purposes of these regulations, the following factors shall be considered: same plant or nearby plants, time of execution, duration, market or markets served, terms, quality of residue gas and gas plant products, volume, and such other factors as may be appropriated to reflect the value of the residue gas and gas plant products;

(3) A value determined by consideration of other information relevant in valuing like-quality gas or gas plant products, including gross proceeds under arm's-length contracts for like-quality residue gas or gas plant products from the same gas plant or other nearby processing plants, posted prices for residue gas or gas plant products, prices received in spot sales of residue gas or gas plant products, other reliable public sources or price or market information, and other information as to the particular lease operation or the saleability of such residue gas or gas plant products; or

(4) A net-back method or any other reasonable method to determine value.

* * * * *

[FR Doc. 91-29732 Filed 12-11-91; 8:45 am]
BILLING CODE 4310-MR-M

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[OAQPS No. CA11-3-5282; FRL-4040-2]

Approval and Promulgation of Implementation Plans, California State Implementation Plan Revision; Bay Area Air Quality Management District, San Diego County Air Pollution Control District, South Coast Air Quality Management District

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice of proposed rulemaking.

SUMMARY: EPA is proposing a limited approval and limited disapproval of revisions to the California State Implementation Plan (SIP) adopted by the Bay Area Air Quality Management District (AQMD), San Diego County Air Pollution Control District (APCD), and South Coast AQMD, on November 1, 1989, March 14, 1989, and January 5, 1990, respectively. The California Air Resources Board submitted the revisions from the Bay Area and South Coast Districts to EPA on December 31, 1990, and submitted the revisions from the San Diego District to EPA on April 5, 1991. This notice addresses three revised rules to control emissions of volatile organic compounds (VOCs) from wastewater separators and related operations. EPA has evaluated each revised rule and is proposing a limited approval under sections 110(k)(3) and 301(a) of the Clean Air Act Amendments of 1990 (CAAA) in order to strengthen the SIP. At the same time, EPA is proposing a limited disapproval of these rules because they contain deficiencies that were required to be corrected by section 182(a)(2)(A) and, as a result, do not meet the requirements of part D of the Act.

DATES: Comments must be received on or before January 13, 1992.

ADDRESSES: Comments may be mailed to: Daniel A. Meer, Southern California & Arizona, Rulemaking Section (A-5-3), Air and Toxics Division, Environmental Protection Agency, Region IX, 75 Hawthorne Street, San Francisco, CA 94105.

Copies of the rule revisions and EPA's evaluation report of each rule are available for public inspection at EPA's Region 9 office during normal business hours. Copies of the submitted rule revisions are also available for inspection at the following locations:

California Air Resources Board, Stationary Source Division, Rule Evaluation Section, 1219 "K" Street, Sacramento, CA 95814.

Bay Area Air Quality Management District, 939 Ellis Street, San Francisco, CA 94109.

San Diego County Air Pollution Control District, 9150 Chesapeake Dr., San Diego, CA 92123-1095.

South Coast Air Quality Management District, Planning & Rules, P.O. Box 4939, Diamond Bar, CA 91765-0939.

FOR FURTHER INFORMATION CONTACT: Thomas Huetteman, Northern California, Nevada & Hawaii, Rulemaking Section (A-5-4), Air and Toxics Division, U.S. Environmental Protection Agency, Region IX, 75 Hawthorne Street, San Francisco, CA 94105, Telephone: (415) 744-1190, FTS: 484-1190.

SUPPLEMENTARY INFORMATION:

Background

On March 3, 1978, EPA promulgated a list of ozone nonattainment areas under the provisions of the Clean Air Act that included the Bay Area Air Quality Management District (AQMD), San Diego County Air Pollution Control District (APCD), and South Coast AQMD (43 FR 8964). 40 CFR 81.305. Because it was not possible for these Districts to reach attainment by the statutory attainment date of December 31, 1982, California requested, and EPA approved, an extension of the attainment date for ozone in these Districts to December 31, 1987. Section 172(a)(2). The Bay Area AQMD, San

Diego County APCD, and South Coast AQMD did not attain the ozone standard by the approved attainment date. On May 26, 1988, EPA notified the Governor of California that each of these District's portion of the California State Implementation Plan (SIP) was inadequate to attain and maintain the ozone standard and requested that deficiencies in the existing SIP be corrected (EPA's SIP-Call). On November 15, 1990, the Clean Air Act Amendments of 1990 (CAAA) were enacted (Pub. L. 101-549, 104 Stat. 1399, codified at 42 U.S.C. 7401-7671q). In section 182(a)(2)(A) of the CAAA, Congress statutorily adopted the requirement that nonattainment areas fix their deficient Reasonably Available Control Technology (RACT) VOC rules and established a deadline of May 15, 1991, for states to submit corrections of those deficiencies.

Section 182(a)(2)(A) applies to areas classified as marginal or above and requires such areas to adopt and correct RACT rules pursuant to pre-amended section 172(b) as interpreted in pre-amendment guidance.[1] EPA's SIP-Call used that guidance to indicate corrections necessary for specific nonattainment areas. The Bay Area is classified as moderate, San Diego is classified as severe, and South Coast is classified as extreme,[2] therefore, these three areas are subject to the RACT fix-up requirement and the May 15, 1991 deadline.

The State of California submitted many revised rules for incorporation into its SIP in response to the SIP-Call and the section 182(a)(2)(A) requirement. This notice addresses EPA's proposal to give limited approval and limited disapproval to the following three revised rules:

Bay Area AQMD Regulation 8, Organic Compounds, Rule 8, Wastewater (Oil-Water Separators) (Rule 8-8).

San Diego County APCD Rule 61.9, Separation of Organic Compounds from Water.

South Coast AQMD Rule 1176, Sumps and Wastewater Separators.

Rule 8-8 and Rule 1176 were submitted to EPA on December 31, 1990. These two rules were found to be complete, pursuant to EPA's completeness criteria set forth in 40 CFR part 51, appendix V, on February 28, 1991.[3] Rule 61.9 was submitted to EPA on April 5, 1991, and was found to be complete on May 21, 1991.

All three rules control emissions of volatile organic compounds (VOCs) from wastewater separators, which are devices designed to separate VOC-containing organic liquids from wastewater. The South Coast District rule also controls VOC emissions from sumps. VOCs contribute to the production of ground level ozone and smog. These rules were adopted as part of each District's effort to achieve the National Ambient Air Quality Standard (NAAQS) for ozone, and in response to the SIP-Call and the section 182(a)(2)(A) CAAA requirement. The following is EPA's evaluation and proposed action for each rule.

EPA Evaluation and Proposed Action

In determining the approvability of a VOC rule, EPA must evaluate the rule for consistency with the requirements of the CAAA, EPA regulations, the EPA policy. These requirements are found in section 110 and part D of the CAAA and in 40 CFR part 51 (Requirements for Preparation, Adoption, and Submittal of Implementation Plans). Among those provisions is the requirement that a VOC rule must, at a minimum, provide for the implementation of reasonably available control technology (RACT) for stationary sources of VOC emissions. This requirement was carried forth from the pre-amended Act. For the purpose of assisting state and local agencies in developing RACT rules, EPA has prepared a series of Control Technique Guideline (CTG) documents which specify the minimum requirements that a rule must contain in order to be approved into the SIP. Under the amended Act, Congress ratified EPA's use of these documents, as well as other Agency policy, for requiring States to "fix-up" their RACT rules. See section 182(a)(2)(A).

The CTG applicable to the rules in this notice is entitled, "Control of Refinery Vacuum Producing Systems, Wastewater Separators, and Process Unit Turnarounds", EPA document #EPA-450/2-77-025. Further EPA policy requirements are also found in the document entitled, "Issues Relating to VOC Regulation Cutpoints, Deficiencies, and Deviations, Clarification to appendix D of November 24, 1987 **Federal Register**" (the "Blue Book"). In general, these requirements have been set forth to ensure that VOC rules are fully enforceable and strengthen or maintain the SIP.

The Bay Area AQMD submitted Rule 8-8, Wastewater (Oil-Water) Separators, includes the following significant changes:

—Added control requirements to air flotation units, oil-water separator effluent channels, ponds, trenches, and basins, and slop oil and dewatering facilities.
—Strengthened control requirements for wastewater separators through more stringent and more detailed cover requirements.
—Added periodic inspection requirements for covers.
—Added fifteen new definitions to clarify and strengthen the rule.

The San Diego County APCD submitted Rule 61.9, Separation of Organic Compounds from Water, includes the following significant changes:

—Expanded the scope of the rule to regulate wastewater separators that recover organic compounds instead of just those that recover oil.
—Strengthened control requirements for wastewater separators through more stringent and more detailed cover requirements.
—Added control requirements for gauging and sampling ports.

Rule 61.9 replaces San Diego County APCD Rule 65, Volatile Organic Compound Separators, which was rescinded by the District on March 14, 1989.

The South Coast AQMD submitted Rule 1176, Sumps and Wastewater Separators, includes the following significant changes:

—Added control requirements for sumps and prohibits certain types of sumps.
—Added control requirements to process drains, sewer lines and junction boxes.
—Expanded the scope of the rule to include chemical plants.
—Strengthened control requirements for wastewater separators through more stringent and more detailed cover requirements.
—Added fifteen new definitions to clarify and strengthen the rule.

Rule 1176 superseded South Coast AQMD Rule 464, Wastewater Separators, as of May 31, 1991.

EPA has evaluated the submitted rules for consistency with the CAAA, EPA regulations, and EPA policy and has found that the revisions address and correct many of the deficiencies

[1] Among other things, the pre-amendment guidance consists of the Post-87 policy, 52 FR 45044 (Nov. 24, 1987); the Blue Book, "Issues Relating to VOC Regulation Cutpoints, Deficiencies, and Deviations, Clarification to appendix D of November 24, 1987 **Federal Register** Notice" (of which notice of availability was published in the **Federal Register** on May 25, 1988); and the existing Control Technique Guidelines (CTGs).

[2] The Bay Area, San Diego, and South Coast were redesignated nonattainment and classified by operation of law pursuant to sections 107(d) and 181(a) upon the date of enactment of the CAAA. See 56 FR 56694 (November 6, 1991).

[3] EPA has since adopted completeness criteria pursuant to section 110(k)(1)(A) of the amended Act. 56 FR 42216 (August 26, 1991)

previously identified by EPA. Furthermore, each rule should achieve further emission reductions through new control requirements for previously uncontrolled processes and more stringent control requirements for wastewater separators. These revisions make the rules stronger and more enforceable than the current SIP rules. Thus, the submitted Rules 8–8, 61.9 and 1176 should be approved in order to strengthen the SIP.

Although the approval of these rules will strengthen the SIP, none of these three rules meets all the applicable requirements of the CAAA, and thus, EPA cannot grant full approval of these rules pursuant to section 110(k)(3). Each rule still contains provisions that cannot be approved by EPA under part D of the CAAA. These deficient provisions involve problems with test methods, allowances for "equivalent" control measures, and allowances for "equivalent" test methods. A detailed discussion of the rule deficiencies can be found in the Technical Support Document (TSD) for Rule 8–8 (8/23/91), the TSD for Rule 61.9 (8/23/91), and the TSD for Rule 1176 (8/23/91), which are available from the U.S. EPA, Region 9 office. The provisions are unapprovable because they are not consistent with the guidance found in the aforementioned "Blue Book" or CTG, and the Districts have not demonstrated that the submitted rules will not lead to rule enforceability problems. These deficiencies were required to be corrected under section 182(a)(2)(A) of the CAAA. EPA is currently working with the Districts in order to correct these deficiencies.

EPA also cannot grant partial approval of the rules pursuant to section 110(k)(3) because the submitted rules are not composed of separable parts which meet all the applicable requirements of the CAAA. However, EPA may grant a limited approval of the submitted rules under section 110(k)(3) in light of EPA's authority pursuant to section 301(a) to adopt regulations necessary to further air quality by strengthening the SIP. The approval is limited in the sense that the rules meet the requirements of section 110(a) of the Act as strengthening the SIP. However, the rules do not meet the section 182(a)(2)(A) requirement of part D because of the noted deficiencies. Thus, EPA is proposing a limited approval of submitted Rules 8–8, 61.9 and 1176 under sections 110(k)(3) and 301(a) of the CAAA in order to strengthen the SIP. Moreover, EPA is also proposing a limited disapproval of these rules because they contain deficiencies that have not been corrected as required by section 182(a)(2)(A) of the CAAA.

Under section 179(a)(2), if the Administrator disapproves a submission under section 110(k) for an area designated nonattainment, based on the submission's failure to meet one or more of the elements required by the Act, the Administrator must apply one of the sanctions set forth in section 179(b) unless the deficiency has been corrected within 18 months of such disapproval. Section 179(b) provides two sanctions available to the Administrator: Highway funding and offsets. The 18-month period referred to in section 179(a) will begin to run at the time EPA publishes final notice of this disapproval. Moreover, the final disapproval triggers the federal implementation plan (FIP) requirement under section 110(c).

Nothing in this action should be construed as permitting or allowing or establishing a precedent for any future request for revision to any state implementation plan. Each request for revision to the state implementation plan shall be considered separately in light of specific technical, economic, and environmental factors and in relation to relevant statutory and regulatory requirements.

Regulatory Process

Under 5 U.S.C. section 605(b), I certify that this SIP revision will not have a significant economic impact on a substantial number of small entities. (See 46 FR 8709.)

This action has been classified as a Table 2 action by the Regional Administrator under the procedures published in the **Federal Register** on January 19, 1989 (54 FR 2214–2225). On January 6, 1989, the Office of Management and Budget waived Table 2 and Table 3 SIP revisions (54 FR 2222) from requirements of section 3 of Executive Order 12291 for a period of two years. EPA has submitted a request for a permanent waiver for Table 2 and Table 3 SIP revisions. OMB has agreed to continue the temporary waiver until such time as it rules on EPA's request.

List of Subjects in 40 CFR Part 52

Air pollution control, Ozone, Hydrocarbons, Reporting and recordkeeping requirements.

Authority: 42 U.S.C. 7401–7642.

Dated: December 2, 1991.

Jeffrey Zelikson,

Acting Regional Administrator.

[FR Doc. 91–29734 Filed 12–11–91; 8:45 am]

BILLING CODE 6560–50–M

40 CFR Part 52

[CA–11–4–5311; FRL–4040–1]

Approval and Promulgation of Implementation Plans, California State Implementation Plan Revision; South Coast Air Quality Management District

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice of proposed rulemaking.

SUMMARY: EPA is proposing a limited approval and limited disapproval of revisions to the California State Implementation Plan (SIP) adopted by the South Coast Air Quality Management District (SCAQMD) on January 5, 1990 and December 7, 1990. The California Air Resources Board submitted the revisions from the SCAQMD to EPA on December 31, 1990, and May 13, 1991. The revisions addressed in this notice consist of three new or revised rules to control emissions of volatile organic compounds (VOCs) from the following sources: Polyester resin operations; polymeric cellular product manufacturers; and leaking equipment at chemical plants, refineries, and petroleum production and processing plants. EPA has evaluated each of the rules and is proposing a limited approval under sections 110(k)(3) and 301(a) of the Clean Air Act Amendments of 1990 (CAAA) because these revisions strengthen the SIP. At the same time, EPA is proposing a limited disapproval of these rules because they contain deficiencies that were required to be corrected by section 182(a)(2)(A) and, as a result, do not meet the requirements of part D of the Act.

DATES: Comments must be received on or before January 13, 1992.

ADDRESSES: Comments may be mailed to: Daniel A. Meer, Southern California & Arizona, Rulemaking Section (A–5–3), Air and Toxics Division, Environmental Protection Agency, Region IX, 75 Hawthorne Street, San Francisco, CA 94105.

Copies of the rule revisions and EPA's evaluation report of each rule are available for public inspection at EPA's Region 9 office during normal business hours. Copies of the submitted rule revisions are also available for inspection at the following locations:

California Air Resources Board, Stationary Source Division, Rule Evaluation Section, 1219 "K" Street, Sacramento, CA 95814.

South Coast Air Quality Management District, Planning & Rules, P.O. Box 4939, Diamond Bar, CA 91765–0939.

FOR FURTHER INFORMATION CONTACT: Thomas Huetteman, Northern California, Nevada & Hawaii, Rulemaking Section (A–5–4); Air and Toxics Division, U.S. Environmental Protection Agency, Region IX, 75 Hawthorne Street, San Francisco, CA 94105, Telephone: (415) 744–1190, FTS: 484–1190.

SUPPLEMENTARY INFORMATION:

Background

On March 3, 1978, EPA promulgated a list of ozone nonattainment areas under the provisions of the Clean Air Act that included the South Coast Air Quality Management District (43 FR 8964). 40 CFR 81.305. Because it was not possible for SCAQMD to reach attainment by the statutory attainment date of December 31, 1982, California requested, and EPA approved, an extension of the attainment date for ozone in SCAQMD to December 31, 1987. Section 172(a)(2). SCAQMD did not attain the ozone standard by the approved attainment date. On May 26, 1988, EPA notified the Governor of California that SCAQMD's portion of the California State Implementation Plan (SIP) was inadequate to attain and maintain the ozone standard and requested that deficiencies in the existing SIP be corrected (EPA's SIP-Call). On November 15, 1990, the Clean Air Act Amendments of 1990 (CAAA) were enacted (Pub. L. 101–549, 104 Stat. 1399, codified at 42 U.S. 7401–7671q). In section 182(a)(2)(A) of the CAAA, Congress statutorily adopted the requirement that nonattainment areas fix their deficient Reasonably Available Control Technology (RACT) VOC rules and established a deadline of May 15, 1991, for states to submit corrections of those deficiencies.

Section 182(a)(2)(A) applies to areas classified as marginal or above and requires such areas to adopt and correct RACT rules pursuant to pre-amended section 172(b) as interpreted in pre-amendment guidance.[1] EPA's SIP-Call used that guidance to indicate corrections necessary for specific nonattainment areas. South Coast is classified as extreme [2]; therefore, it is subject to the RACT fix-up requirement and the May 15, 1991 deadline.

The State of California submitted many rules to EPA for incorporation into its SIP in response to the SIP-Call and the section 182(a)(2)(A) requirement. This notice addresses EPA's proposal to give limited approval and limited disapproval to the following three SCAQMD rules: Rule 1162, Polyester Resin Operations, which controls VOC emissions at these sources through process restrictions and controls; Rule 1173, Fugitive Emissions of Volatile Organic Compounds, which controls VOC emissions from leaking equipment at refineries, chemical plants, natural gas processing plants, and oil and gas production facilities; and Rule 1175, Control of Emissions from the Manufacture of Polymeric Cellular (Foam) Products, which controls VOC emissions from these sources through the installation of emission control devices.

Rule 1175 was submitted to EPA on December 31, 1990, and the other two rules were submitted on May 13, 1991. The Rule 1175 submittal was found to be complete, pursuant to EPA's completeness criteria set forth in CFR part 51, appendix V, on May 21, 1991, and the other two rule submittals were found to be complete on July 10, 1991.[3] The rules control VOCs, which contribute to the production of ground level ozone and smog. These rules were adopted as part of the District's effort to achieve the National Ambient Air Quality Standard (NAAQS) for ozone, and in response to the SIP-Call and the section 102(a)(2)(A) CAAA requirement. The following is EPA's evaluation and proposed action for SCAQMD Rule 1162, 1173, and 1175.

EPA Evaluation and Proposed Action

In determining the approvability of a VOC rule, EPA must evaluate the rule for consistency with the requirements of the CAAA, EPA regulations, and EPA policy. These requirements are found in section 110 and Part D of the CAAA and in 40 CFR part 51 (Requirements for Preparation, Adoption, and Submittal of Implementation Plans). Among those provisions is the requirement that a VOC rule must, at a minimum, provide for the implementation of reasonably available control technology (RACT) for stationary sources of VOC emissions. This requirement was carried forth from the pre-amended Act. For the purpose of assisting state and local agencies in developing RACT rules, EPA has prepared a series of Control Technique Guideline (CTG) documents which specify the minimum requirements that a rule must contain in order to be approved into the SIP. Under the amended Act, Congress ratified EPA's use of these documents, as well as other Agency policy, for requiring States to "fix-up" their RACT rules. See section 182(a)(2)(A).

Two CTGs are applicable to Rule 1173. These CTGs are entitled, "Control of Volatile Organic Compound Leaks from Synthetic Organic Chemical and Polymer Manufacturing Equipment", EPA document # EPA–450/3–83–006, and "Control of Volatile Organic Compound Equipment Leaks from Natural Gas/Gasoline Processing Plants", EPA document # EPA–450/3–83–007. There are not CTGs applicable to Rule 1162 and Rule 1175. Further EPA policy requirements applicable to all VOC rules are found in the document entitled, "Issues Relating to VOC Regulation Cutpoints, Deficiencies, and Deviations, Clarification to Appendix D of November 24, 1987 **Federal Register**" (the "Blue Book"). In general, these requirements have been set forth to ensure that VOC rules are fully enforceable and strengthen or maintain the SIP.

Rule 1173 is a revision of an existing rule approved into the SIP, which contained deficiencies that were required to be corrected. Rules 1162 and Rule 1175 have not been previously approved into the SIP. These rules were submitted to strengthen the SIP through the control of previously unregulated sources.

Submitted Rule 1173, Fugitive Emissions of Volatile Organic Compounds, replaces the SIP-approved Rule 466, Pumps and Compressors, Rule 466.1, Valves and Flanges, and Rule 467, Pressure Relief Devices. This version of Rule 1173 also supersedes a version of the rule that was submitted to EPA on December 31, 1990; no action will be taken on the earlier submitted version of the rule. Rule 1173 includes the following significant changes from the SIP-approved rules:

—Expanded the scope of the rule to include leaks from petroleum production and natural gas processing.
—Strengthened the leak repair requirements by requiring the repair of leaks as low as 1000 ppm for all components except pressure relief valves, which must be repaired to less than a 200 ppm leak level.
—Requires repair of major leaks in five days or less, and requires that components that leak chronically be

[1] Among other things, the pre-amendment guidance consists of the Post-87 policy, 52 FR 45044 (Nov. 24, 1987); the Blue Book, "Issues Relating to VOC Regulation Cutpoints, Deficiencies, and Deviations, Clarification to Appendix D of November 24, 1987 **Federal Register** Notice" (of which notice of availability was published in the **Federal Register** on May 25, 1988); and the existing Control Technique Guidelines (CTGs).

[2] South Coast was redesignated nonattainment and classified by operation of law pursuant to sections 107(d) and 181(a) upon the date of enactment of the CAAA. See 56 FR 56694 (November 6, 1991).

[3] EPA has since adopted completeness criteria pursuant to section 110(k)(1)(A) of the amended Act. 56 FR 42216 (August 26, 1991)

either vented to a control device or replaced with Best Available Control Technology.

—Increased the inspection frequency requirements from annual to quarterly inspections.

—Added a number of new definitions to clarify the rule.

—Added recordkeeping requirements, and added test methods for leak detection and VOC content.

Submitted Rule 1162, Polyester Resin Operations, is being proposed for inclusion into the SIP for the first time. This version of Rule 1162 also supersedes a version of the rule that was submitted to EPA on April 5, 1991; no action will be taken on the earlier submitted version of the rule. The rule controls emissions from these sources through a set of control options that include the use of resin material with no more than 35% by weight monomer content, the use of low-VOC-emission resins, the use of a closed-mold system, or the use of an emission control system. The rule also requires specific spray equipment for spraying operations.

Submitted Rule 1175, Control of Emissions from the Manufacture of Polymeric Cellular (Foam) Products, is also being proposed for inclusion into the SIP for the first time. The rule controls emissions from these sources by requiring the installation of an emission collection and control system to control emissions from all steps in the manufacturing process. It also requires the control of emissions from the final products by requiring that the products be stored for a specified period of time in an area vented to the collection system.

EPA has evaluated the submitted roles for consistency with the CAA, EPA regulations, and EPA policy and has found that the rules meet most of the requirements and correct many of the deficiencies previously identified by EPA. Furthermore, Rules 1162, 1173, and 1175 should achieve further emission reductions through new control requirements for previously uncontrolled sources or through more stringent control requirements. Rules 1162 and 1175 will achieve emission reductions through the control of previously unregulated sources. Rule 1173 will achieve emission reductions primarily through a more stringent leak standard and through increased inspection requirements; rule changes also improve the enforceability of the rule. These new and revised rules improve the SIP by reducing emissions and making existing rules more enforceable. Thus, the submitted Rules 1162, 1173 and 1175 should be approved in order to strengthen the SIP.

Although the approval of these rules will strengthen the SIP, none of these three rules meet all the applicable requirements of the CAAA, and thus, EPA cannot grant full approval of these rules pursuant to section 110(k)(3). Each rule still contains provisions that cannot be approved by EPA under part D of the CAAA. These deficient provisions involve missing test methods, which is a deficiency in each of the three rules, as well as problems in some of the rules with capture or control efficiency, exemptions to the rule, or allowances for "equivalent" test methods. A detailed discussion of the rule deficiencies can be found in the Technical Support Document (TSD) for Rule 1162 (8/21/91), the TSD for Rule 1173 (8/21/91), and the TSD for Rule 1175 (8/21/91), which are available from the U.S. EPA, Region 9 office. The provisions are unapprovable because they are not consistent with the guidance found in the aforementioned "Blue Book" or CTG and the District has not demonstrated that the submitted rule will not lead to rule enforceability problems. EPA is currently working with the District in order to correct these deficiencies.

EPA also cannot grant partial approval of the rules pursuant to section 110(k)(3) because the submitted rules are not composed of separable parts which meet all the applicable requirements of the CAAA. However, EPA may grant a limited approval of the submitted rule under section 110(k)(3) in light of EPA's authority pursuant to section 301(a) to adopt regulations necessary to further air quality by strengthening the SIP. The approval is limited in the sense that the rules meet the requirements of section 110(a) of the Act as strengthening the SIP. However, the rules do not meet the section 182(a)(2)(A) requirement of part D because of the noted deficiencies. Thus, EPA is proposing a limited approval of submitted Rules 1162, 1173 and 1175 under sections 110(k)(3) and 301(a) of the CAAA in order to strengthen the SIP. Moreover, EPA is also proposing a limited disapproval of these rules because they contain deficiencies that have not been corrected as required by section 182(a)(2)(A) of the CAAA.

Under section 179(a)(2), if the Administrator disapproves a submission under section 110(k) for an area designated nonattainment, based on the submission's failure to meet one or more of the elements required by the Act, the Administrator must apply one of the sanctions set forth in section 179(b) unless the deficiency has been corrected within 18 months of such disapproval. Section 179(b) provides two sanctions available to the Administrator: Highway funding and offsets. The 18-month period referred to in section 179(a) will begin to run at the time EPA publishes final notice of this disapproval. Moreover, the final disapproval triggers the federal implementation plan (FIP) requirement under section 110(c).

Nothing in this action should be construed as permitting or allowing or establishing a precedent for any future request for revision to any state implementation plan. Each request for revision to the state implementation plan shall be considered separately in light of specific technical, economic, and environmental factors and in relation to relevant statutory and regulatory requirements.

Regulatory Process

Under 5 U.S.C. section 605(b), I certify that this SIP revision will not have a significant economic impact on a substantial number of small entities. (See 46 FR 8709.)

This action has been classified as a Table 2 action by the Regional Administrator under the procedures published in the **Federal Register** on January 19, 1989 (54 FR 2214–2225). On January 6, 1989, the Office of Management and Budget waived Table 2 and Table 3 SIP revisions (54 FR 2222) from requirements of section 3 of Executive Order 12291 for a period of two years. EPA has submitted a request for a permanent waiver for Table 2 and Table 3 SIP revisions. OMB has agreed to continue the temporary waiver until such time as it rules on EPA's request.

List of Subjects in 40 CFR Part 52

Air pollution control, Ozone, Hydrocarbons, Reporting and recordkeeping requirements.

Authority: 42 U.S.C. 7401–7642.

Dated: December 2, 1991.

Jeffrey Zelikson,

Acting Regional Administrator.

[FR Doc. 91–29735 Filed 12–11–91; 8:45 am]

BILLING CODE 6560–50–M

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40 CFR Part 52

[Region II Docket No. 111; FRL–4040–3]

Approval and Promulgation of Implementation Plans; Revision to the State of New Jersey Implementation Plan for Ozone

AGENCY: Environmental Protection Agency.

ACTION: Proposed rule.

SUMMARY: The Environmental Protection Agency (EPA) is today announcing its proposed approval of a revision to the New Jersey State Implementation Plan (SIP) for ozone. This revision was prepared by the New Jersey Department of Environmental Protection pursuant to a SIP commitment to reduce ozone levels in the State of New Jersey. Today's notice proposes to incorporate into the New Jersey SIP a revised regulation, subchapter 16, "Control and Prohibitions of Air Pollution by Volatile Organic Substances," which will reduce volatile organic compound emissions resulting from the loading of marine vessels in the State of New Jersey.

DATES: Comments must be received by January 13, 1992.

ADDRESSES: All comments should be addressed to: Constantine Sidamon-Eristoff, Regional Administrator, Environmental Protection Agency, 26 Federal Plaza, New York, NY 10278.

Copies of the state submittal are available at the following addresses for inspection during normal business hours:

Environmental Protection Agency, Region II Office, Air Programs Branch, 26 Federal Plaza, room 1034A, New York, New York 10278.

New Jersey Department of Environmental Protection, Division of Environmental Quality, Bureau of Air Pollution Control, 401 East State Street, Trenton, New Jersey 08625.

FOR FURTHER INFORMATION CONTACT: Mr. William S. Baker, Chief, Air Programs Branch, Environmental Protection Agency, 26 Federal Plaza, room 1034A, New York, New York 10278, (212) 264–2517.

SUPPLEMENTARY INFORMATION:

Background

In its most recent comprehensive State Implementation Plan (SIP) revision for ozone, which was submitted to the Environmental Protection Agency (EPA) on September 26, 1983 and approved by EPA on November 6, 1983 (48 FR 51472), the State of New Jersey committed to adopt measures to control the emissions of volatile organic compounds (VOCs) into the ambient air. These measures included source categories covered by EPA's Control Techniques Guidelines (CTGs) and other larger sources not addressed by a CTG. In addition, the State committed to adopt other "reasonably available" control measures and specific "extraordinary" control measures. VOC emission reductions obtained from the implementation of these measures are needed by the State in order to attain the national ambient air quality standards (NAAQS) for ozone. Today's notice concerns one of the "extraordinary" control measures, for regulation of the loading of gasoline into marine vessels for the purpose of transport.

Whenever gasoline is transferred or stored, gasoline vapors can be released into the atmosphere. Previously, the State has adopted control measures for the collection and control of fugitive gas vapors at storage facilities, terminals, and the loading of gasoline service station tanks (known collectively as Stage I vapor control systems) and for the control of gasoline vapors resulting from the refueling of vehicle fuel tanks at gasoline service stations (known as Stage II vapor controls). The filling of gasoline tankers is the one significant remaining uncontrolled link in the fuel distribution system in the State.

The State Submittal

On June 20, 1990, the New Jersey Department of Environmental Protection (NJDEP) submitted to EPA adopted revisions to chapter 27, title 7 of the New Jersey Administration Code (N.J.A.C. 7:27) subchapter 16, entitled "Control and Prohibition of Air Pollution by Volatile Organic Substances," which require the control of fugitive gasoline vapors resulting from the loading of marine transport vessels. The revisions were adopted by the State in two parts, with the respective effective dates of February 6, 1989 and December 4, 1989. The February 6, 1989 rule established applicability, equipment efficiency, and exclusion rate requirements, but reserved the portion of the rule relating to the compliance date pending the outcome of motions that were to be made to the United States District Court in the case of the *American Lung Association* v. *Kean*, Civ. No. 87–288, in order to determine the most appropriate compliance date. A compliance date of February 21, 1991 (subsequently extended to June 21, 1991) was established by the Court, and was incorporated into the rule by the State effective December 4, 1989.

These revisions add to subchapter 16 requirements for the control of gasoline vapors resulting from the loading of marine transport vessels (i.e., barges and tankers) with gasoline. When the storage tanks on these vessels are filled, the air inside the tank is displaced and forced out into the atmosphere. This air is heavily saturated with VOCs which react to form ozone, a pollutant for which the State is in nonattainment.

The control systems required under subchapter 16 are those capable of capturing at least 95 percent of this vapor laden air before it enters the atmosphere. The vapor control systems must be approved by NJDEP and also must meet safety requirements set by the United States Coast Guard (USCG). USCG safety standards are designed to prevent over and under pressurization, over filling, and fires (see 55 FR 25395, June 21, 1990).

Subchapter 16 applies to all shore facilities that load marine delivery vessels with gasoline and whose throughput is greater than 6,000,000 gallons per year and to any facility that loads 60,000 gallons or more into marine delivery vessels in a single day between May 1 and September 15. In addition, any marine delivery vessel receiving gasoline at an affected facility is required to have the necessary vapor collection piping and connections which route the displaced vapors to the control apparatus. All affected facilities and tankers must be in compliance by June 21, 1991.

The NJDEP has identified the test methods that it will use to ensure compliance with this rule. An efficiency determination and a leak test are included as conditions on the permit to construct. The procedures for both tests are detailed in N.J.A.C. 7:27B–3, "Sampling and Analytical Procedures for the Determination of Volatile Organic Substances from Source Operations." It should be noted that as part of its SIP revision request, the State has specifically identified EPA Method 2A for determining the exhaust volume flow rate of VOCs emitted from carbon adsorption type control equipment with exhaust gas temperatures less than 50° C. For determining the exhaust volume flow rate from incinerator type control devices with exhaust gas temperatures greater than 50° C, the State has previously identified EPA Method 2B as referenced in N.J.A.C. 7:27B–3.

Section 16.10 contains a general variance provision which permits the Commissioner of NJDEP to accept alternative controls when a facility is unable to comply because of technical infeasibility. In this regard, it should be noted that EPA cannot recognize any variance or alternate requirement until it is submitted by the State as a SIP revision and is approved by EPA.

Finding

EPA finds that the adoption of controls on the loading of marine delivery vessels with gasoline in subchapter 16 meets New Jersey's SIP commitment. The design of the program submitted by the State is substantially equivalent to the program committed to in the SIP, both in nature and emissions

reductions. The VOC reductions associated with this regulation are a necessary part of New Jersey's program to attain the ozone standard. EPA is, therefore, proposing to approve the revisions to subchapter 16 of the N.J.A.C. 7–27 effective February 6, 1989 and December 4, 1989 as they relate to marine delivery vessel loading.

EPA is soliciting public comments on its proposed action. Comments will be considered before taking final action. Interested parties may participate in the federal rulemaking procedure by submitting written comments to the address noted at the beginning of today's notice.

Nothing in this action should be construed as permitting or allowing or establishing a precedent for any future request for revision to any SIP. Each request for revision to a SIP shall be considered separately in light of specific technical, economic, and environmental factors and in relation to relevant statutory and regulatory requirements.

The Agency has reviewed this request for revision of the federally approved SIP for conformance with the provisions of the 1990 Amendments enacted on November 15, 1990. The Agency has determined that this action conforms with those requirements irrespective of the fact that the submittal preceded the date of enactment. The revision will achieve emission reductions equivalent to what was provided by the SIP commitment, and therefore, meets the requirements of section 193 (specifically, the second sentence of the provision). Beyond that, the revision in no way would interfere with the SIP's ability to meet the new Act's requirements, and thus meets the test in section 110(l). Under the provisions of section 183(f) of the amended Clean Air Act, EPA is required by November 15, 1992 to promulgate standards regulating the same sources of VOC emissions as those being regulated by New Jersey. These provisions further stipulate that any such state standards be "no less stringent" than the federally promulgated standards. If such becomes the case with the New Jersey standards, the federal standards will preempt them.

This notice is issued as required by section 110 of the Clean air Act, as amended. The Administrator's decision regarding the approval of this plan revision is based on its meeting the requirements of section 110 of the Clean Air Act and 40 CFR part 51.

Under 5 U.S.C. 605(b), I certify that this SIP revision will not have a significant economic impact on a substantial number of small entities (See 46 FR 8709).

The Office of Management and Budget has exempted this rule from the requirements of section 3 of Executive Order 12291.

List of Subjects in 40 CFR Part 52

Air pollution control, Hydrocarbons, Ozone, Volatile organic compounds.

Authority: 42 U.S.C. 7401–7642.

Dated: November 12, 1991.

Constantine Sidamon-Eristoff,

Regional Administrator.

[FR Doc. 91–29750 Filed 12–11–91; 8:45 am]

BILLING CODE 6560–50–M

DEPARTMENT OF TRANSPORTATION

National Highway Traffic Safety Administration

49 CFR Part 571

Denial of Petition for Rulemaking Standard No. 108; Truck Trailer Manufacturers Association

AGENCY: National Highway Traffic Safety Administration (NHTSA), DOT.

ACTION: Denial of petition for rulemaking.

SUMMARY: This notice denies a petition for rulemaking to amend Standard No. 108 to allow taillamps on a large vehicle to be mounted at locations up to 24 inches forward of the extreme rear of the vehicle, and to allow turn signal and stop lamps to be mounted up to 60 inches forward of the rear, instead of "on the rear" as the standard presently requires. In the judgment of the agency, such an amendment would affect the ability of the lamps to meet the requirement of the standard that the lamps on both sides of a vehicle's rear end must be simultaneously visible from any angle between and including 45-degree angles to the rear left and right of the vehicle, and would therefore detract from motor vehicle safety.

FOR FURTHER INFORMATION CONTACT: Jere Medlin, Office of Rulemaking, NHTSA (202–366–5276).

SUPPLEMENTARY INFORMATION: Federal Motor Vehicle Safety Standard No. 108, 49 CFR 571.108, *Lamps, Reflective Devices, and Associated Equipment,* establishes, among other things, requirements for the location of lamps on motor vehicles. With respect to multipurpose passenger vehicles, trucks, buses, and trailers, whose overall width is 80 inches or more, Table II specifies that taillamps, stop lamps, rear turn signal lamps, identification lamps, clearance lamps, and reflex reflectors be located "on the rear."

In 1990, NHTSA furnished an interpretation to a trailer manufacturer stating that lamps mounted 27 inches forward of the rear of the vehicle would not be "on the rear" as the standard requires. The letter also pointed out that rear lamps were subject to the SAE requirement that signals from a lamp on both sides of a vehicle shall be simultaneously visible from any horizontal angle between and including an angle 45 degrees to the left of the left rear corner of the vehicle and an angle 45 degrees to the right of the right rear corner. This requirement ensures, for example, that a motorist to the rear and either left or right of a vehicle can still see both stop lamps. NHTSA's interpretation caused another trailer manufacturer to ask for a reinterpretation, allowing lamps to be located up to 36 inches forward of the rear, assuming that the 45 degree visibility requirements were met. The agency denied the request, but expressed its willingness to interpret "on the rear" to mean the trailing edge of the rear fender which may not extend as far rearward as a bulk tank container.

NHTSA's two interpretations led Truck Trailer Manufacturers Association (TTMA) to petition the agency for rulemaking to amend Standard No. 108 to allow taillamps to be mounted "within 24 inches of the extreme rear", and to allow stop lamps and turn signal lamps to be located "within 60 inches of the extreme rear." The reason given by TTMA for its petition was that it had "interpreted 'on the rear' to mean the rearward part of the trailer." It argued that a literal interpretation of the phrase would require that the lamps be mounted within the rear bumper. It reported that "about one-quarter of the tank trailers have their turn signal, stop, and tail lamps located more than 24 inches forward of the rear bumper", some of them "as much as five feet forward of the rear bumper." The petitioner pointed out that the vehicles would remain subject to the SAE visibility requirements. TTMA surmised that safety would not be compromised: "We doubt that locating these lamps five feet forward of the rear bumper will have any affect (sic) on the depth perception of the trailer by following drivers since 49 CFR 323.25(b) (a regulation of DOT's Office of Motor Carrier Safety, Federal Highway Administration) requires that these lamps 'be capable of being seen at all distances between 500 feet and 50 feet.' "

TTMA explained how it interprets the existing requirement that "Signals from

lamps on both sides of the vehicle shall be visible through a horizontal angle from 45 degrees to the left to 45 degrees to the right." Its interpretation as shown graphically in the sketch on page 2 of its revised petition (Figure 1 of this notice) is incorrect. It is this geometrically defined visibility requirement that, with the basic "on the rear" requirement, determines how far forward from the rear taillamps (or turn signal or stop lamps) may be placed.

The agency would like to point out that, effective December 1, 1990, SAE Standard J1395 APR85 became the requirement for original equipment turn signal lamps, and SAE Standard J1398 MAY85 for original equipment stop lamps on vehicles of 80 or more inches in overall width. On the same day, SAE Standard J588 NOV84, and SAE Standard J586 FEB84 became the standards for original equipment turn signal and stop lamps, respectively, for vehicles less than 80 inches in overall width. The geometric visibility requirements are identical among these standards and is identical for taillamps for both vehicle widths as referenced in SAE Standard J585e, September 1977.

These uniform geometric visibility requirements (using SAE J1395 APR85 as an example) are:

5.4 Installation Requirements—The turn signal lamp shall beet the following requirements as installed on the vehicle:

5.4.1 Visibility of the turn signal lamps shall not be obstructed by any part of the vehicle throughout the photometric test angles for the lamp unless the lamp is designed to comply with all photometric and visibility requirements with these obstructions considered. Signals from lamps on both sides of the vehicle shall be visible through a horizontal angle from 45 deg to the left for the left lamp to 45 deg to the right for the right lamp.

Where more than one lamp or optical area is lighted on each side of the vehicle only one such area on each side need comply. To be considered visible, the lamp must provide an unobstructed view of the outer lens surface excluding reflex, of at least 13 cm^2 measured at 45 deg to the longitudinal axis of the vehicle.

Additionally, the SAE Standards state that the measurement of photometry shall be made at a distance of 3 meters from the lamp. Thus, the turn signals on both sides of the vehicle must be simultaneously visible through a horizontal angle from 45 degrees originating at the left lamp, to the left to 45 degrees to the right originating at the right lamp measured at a radius of 3 meters. This is illustrated in Figure 2 of this notice, and NHTSA will expect manufacturers to comply with this requirement as shown. If such a lamp is placed 60 inches forward of the rearmost point of the vehicle, it is likely to be shielded by the tank body as appears to be shown in some of the photographs provided by TTMA. If the lamps are shielded, the vehicles would not only be noncomplying, but safety would be decreased because the lamps would not be "on the rear" and thus not mark the end of the vehicle. This same geometric visibility requirement also exists in the referenced SAE standards for stop lamps and taillamps for vehicles 80 or more inches wide.

On August 13, TTMA submitted a revision of its petition under which taillamps could be located up to 24 inches from the rear, a decrease from the 60 inches originally requested. This did not affect the earlier petition to allow stop lamps and turn signal lamps to be located up to 60 inches from the rear. In support, TTMA stated that the 24-inch range would be consistent with the range for the location of rear side marker lamps found in TTMA RP No. 9–85, "Location of lighting Devices on Trailers." It claimed that the TTMA recommended practice was reviewed by NHTSA in the past with no objection to the side marker location. However, Standard No. 108 specifies that rear side marker lamps on vehicles over 80 inches in width be "as far to the rear as practicable." This is not the same requirement as up to 24 inches from the rear as TTMA would have the reader of its petition believe.

NHTSA has carefully reviewed TTMA RP No. 9–85, and found that that portion of it on the location of tail, stop, and turn signal lamps for trailer 80 inches or more in overall, width does not state any range of location; it specifies the "rear." Consistent, however, with the TTMA petition, drawing in RP No. 9–85 show location zones for rear side market lamps that do extend 24 inches from the rear of a trailer. However, no corresponding range is depicted for turn signal, stop, or taillamps. Thus, TTMA itself currently recommends that tail, stop, and turn signal lamps be at the "rear", contrary to its petition for allowance of up to 60 inches from the rear.

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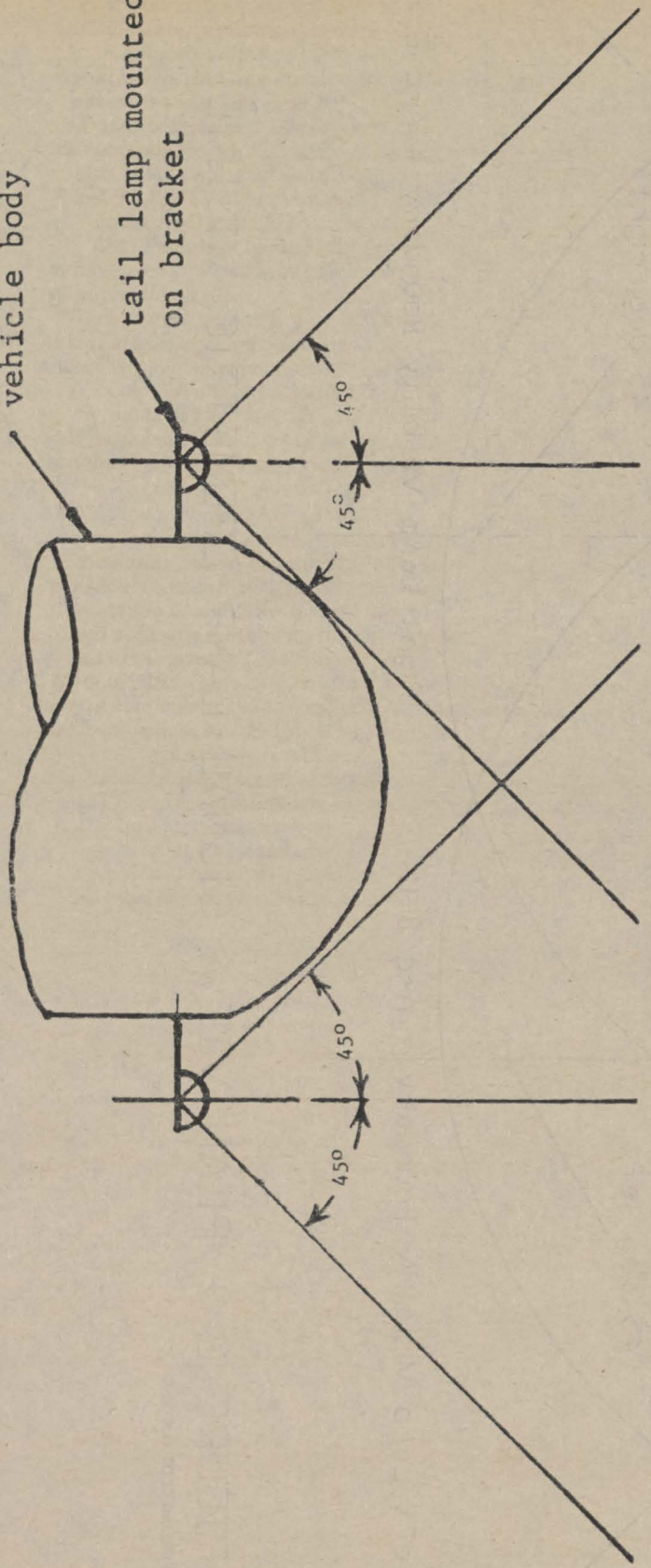

FIGURE 1 - TTMA GEOMETRIC VISIBILITY
(from August 13, 1991, Letter to NHTSA)

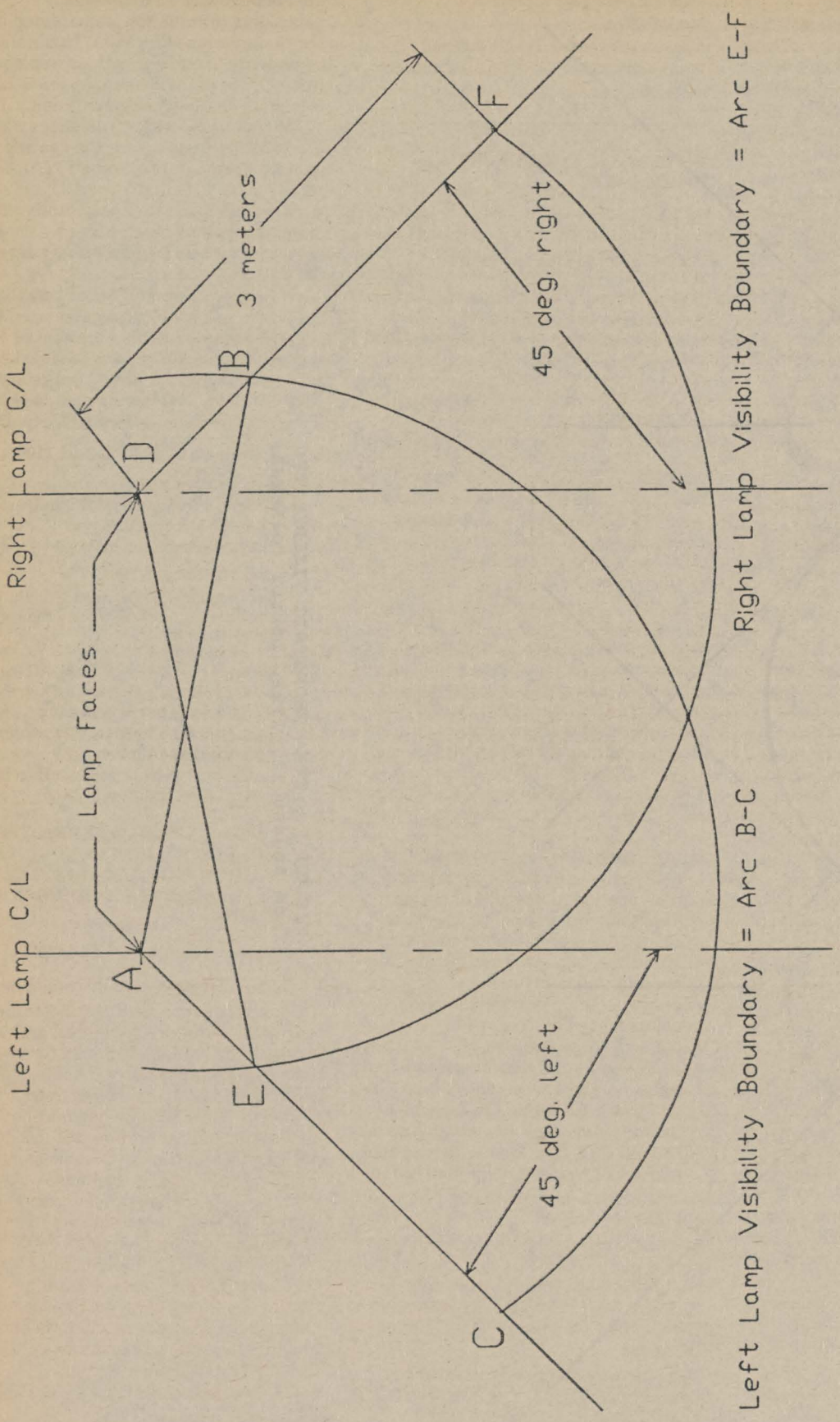

FIGURE 2 - PLAN VIEW, SIGNAL LAMP GEOMETRIC VISIBILITY

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TTMA claims that NHTSA "approved" RP No. 9–85. What NHTSA said, as reflected in a December 23, 1985 letter to TTMA was that RP No. 9 "accurately reflects the requirements of FMVSS No. 108." As noted above, RP No. 9–95 states that stop, turn signal and taillamps are to be located on the "Rear." Thus, contrary to TTMA's implication, MHTSA did not approve any location other than the "rear" for these lamps. In any event, Standard No. 108 is the Federal standard, and documents such as the TTMA recommended practices are to be used advisedly by a manufacturer.

NHTSA accords high safety priority to ensuring the conspicuity of large vehicles, and improvement of the ability of other drivers to detect the presence of large vehicles in the roadway. The primary means of detecting large vehicles at night or under other conditions of reduced visibility is their rear lighting systems. Thus NHTSA does not intend to modify any rear lighting requirements unless such can be demonstrated to have, at the very minimum, a neutral effect upon motor vehicle safety.

Standard No. 108 contains identical location requirements for passengers car lamps. Although some manufacturers have, for reasons of design, chosen to place some lamps within the rear bumper, the industry has understood that the phrase "on the rear" means that the lamps may be on the rear of the vehicle body. NHTSA regards lamps in that location as meeting the standard. Petitioner has not claimed that it is impracticable to locate rear stop, turn signal, and taillamps on the rear of tank body vehicles, only that some manufacturers have chosen not to do so in the belief that the lamps will remain cleaner or less subject to damage in a location other than the rear. NHTSA therefore wishes to advise the industry that it will expect all future tank type vehicles to mount these lamps on the rear, in accordance with Table II, or, if not on the rear, on the trailing edge of the rear fender, provided that the 45-degree visibility requirements are met.

NHTSA has completed its technical review of the petition, and has concluded that there is no reasonable possibility that the amendment requested in the petition will be issued at the completion of a rulemaking petition. Accordingly, the petition is denied.

Authority: 15 U.S.C. 1392, 1407; delegations of authority at 49 CFR 1.50 and 501.8.

Dated: December 5, 1991.

Barry Felrice,

Associate Administrator for Rulemaking.

[FR Doc. 91–29686 Filed 12–11–91; 8:45 am]

BILLING CODE 4910–59–M

INTERSTATE COMMERCE COMMISSION

49 CFR Part 1109

[Ex Parte No. 55 (Sub No. 83)]

Use of Alternative Dispute Resolution Procedures in Commission Proceedings and Those in Which the Commission is a Party

AGENCY: Interstate Commerce Commission.

ACTION: Notice of proposed rulemaking.

SUMMARY: The Commission proposes to amend its rules of practice by adding a new 49 CFR Part 1109 and to issue a policy statement implementing the Administrative Dispute Resolution Act (ADR), Public Law No. 101–552, and the Negotiated Rulemaking Act (Reg-neg), Public Law No. 101–648. Both of these statutes amend the Administrative Procedure Act to authorize and encourage administrative agencies to use arbitration, mediation, negotiated rulemaking, and other consensual methods of dispute resolution.

Section 3(a) of ADR requires the Commission to adopt a policy statement as to how it intends to implement that statute concerning: (a) Formal and informal adjudications; (b) rulemakings; (c) enforcement actions; (d) issuance and revocation of licenses or permits; (e) contract administration; (f) litigation brought by or against the agency; and (g) other agency actions. The Commission is seeking comments to allow the affected public to participate in the development of procedures to implement these statutes.

The Commission also intends to apply General Services Administration (GSA) rules for implementing the Federal Advisory Committee Act, Public Law No. 92–463, 5 U.S.C. app. 1. Those rules may be reviewed at 41 CFR part 101–6.

DATES: Comments are due by February 10, 1992.

ADDRESSES: Send an original and 10 copies of all comments to: Office of the Secretary, Case Control Branch, Attn: Ex Parte No. 55 (Sub-No. 83), Interstate Commerce Commission, Washington, DC 20423.

FOR FURTHER INFORMATION CONTACT: Louis Mackall, (202) 275–7602. [TDD for hearing impaired: (202) 275–1721].

SUPPLEMENTARY INFORMATION: Additional information is contained in the Commission's decision. To obtain a copy, write to, call, or pick up in person from: Office of the Secretary, room 2215, Interstate Commerce Commission, Washington, DC 20423; Telephone: (202) 275–7428. [Assistance for the hearing impaired is available through TDD service (202) 275–1721.]

This action will not significantly affect either the quality of the human environment or conservation of energy resources.

This proposal should benefit small entities in instances where it is used by simplifying and reducing the cost of regulatory procedures. Because these ADR procedures are purely voluntary, small entities need not consent to them if they do not believe they will benefit.

List of Subjects in 49 CFR Part 1109

Administrative practice and procedure, Railroads, Motor carriers, Water carriers, Reporting and recordkeeping requirements.

Decided: December 5, 1991.

By the Commission: Chairman Philbin, Vice Chairman Emmett, Commissioners Simmons, Phillips and McDonald.

Sidney L. Strickland, Jr.,

Secretary.

For the reasons set forth in the preamble, title 49, chapter X, is proposed to be amended as follows:

1. A new part 1109 is proposed to be added to read as follows:

PART 1109—USE OF ALTERNATIVE DISPUTE RESOLUTION IN COMMISSION PROCEEDINGS AND THOSE IN WHICH THE COMMISSION IS A PARTY

Authority: 5 U.S.C. 553, 559, and 582.

§ 1109.1 Alternative dispute resolution.

Commission proceedings, including those with statutory deadlines, may generally be held in abeyance for 90 days to allow alternative dispute resolution (ADR) procedures to be explored. These include negotiation, mediation, and arbitration. All the parties must inform the Commission in writing if they seek to use these voluntary alternative procedures. The Commission will determine whether the case is an appropriate one for ADR treatment based on the criteria of 5 U.S.C. 582(b). If the case is held in abeyance for this purpose, time spent under these procedures will not count towards the statutory deadlines under the Interstate Commerce Act.

[FR Doc. 91–29683 Filed 12–11–91; 8:45 am]

BILLING CODE 7035–01–M

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Parts 672 and 675

Groundfish of the Gulf of Alaska; Groundfish of the Bering Sea and Aleutian Islands

AGENCY: National Marine Fisheries Service (NMFS), NOAA, Commerce.

ACTION: Notice of availability of amendments to fishery management plans and request for comments.

SUMMARY: The North Pacific Fishery Management Council (Council) has submitted Amendment 18 to the Fishery Management Plan for the Groundfish Fishery of the Bering Sea and Aleutian Islands Area (BSAI FMP) and Amendment 23 to the Fishery Management Plan for Groundfish of the Gulf of Alaska (GOA FMP) for Secretarial review and is requesting comments from the public. Copies of the amendments, the draft supplemental environmental impact statement/regulatory impact review/initial regulatory flexibility analysis (DSEIS/RIR/IRFA) may be obtained from the Council (see "**ADDRESSES**").

DATES: Comments on the amendments should be submitted on or before February 4, 1992.

ADDRESSES: Comments should be sent to Steven Pennoyer, Director, Alaska Region, National Marine Fisheries Service, P.O. Box 21668, Juneau, Alaska 99802. Copies of the amendments and the DSEIS/RIR/IRFA are available on request from the North Pacific Fishery Management Council, P.O. Box 103136, Anchorage, AK 99510 (telephone 907–271–2809).

FOR FURTHER INFORMATION CONTACT: Jay J. C. Ginter, Alaska Region, National Marine Fisheries Service, (907) 586–7228.

SUPPLEMENTARY INFORMATION: The Magnuson Fishery Conservation and Management Act (Magnuson Act) (16 U.S.C. 1801 *et seq.*) requires that each regional Fishery Management Council submit any fishery management plan or plan amendment it prepares to the Secretary of Commerce (Secretary) for review and approval, disapproval, or partial disapproval. The Magnuson Act also requires that the Secretary, on receiving the plan or amendment, must immediately publish a notice that the plan or amendment is available for public review and comment. The Secretary will consider the public comments received during the comment period in determining whether to approve Amendments 18 and 23.

If approved, Amendment 18 to the BSAI FMP would:

(1) Allocate the pollock total allowable catch (TAC) to inshore and offshore components of the fishery as follows:

35 percent for inshore and 65 percent for offshore in year 1,

40 percent for inshore and 60 percent for offshore in year 2,

45 percent for inshore and 55 percent for offshore in year 3, and subsequent years;

(2) Assign up to 7½ percent of the initial TAC for pollock to selected communities of the West Bering Sea and Aleutian Islands, beginning in 1992, based on recommendations of the Governor of Alaska; and

(3) Establish a catcher vessel operational area (CVOA) within the BSAI area that would allow directed fishing for pollock by the inshore component only, except for a limited amount of pollock that may be taken from the CVOA by the offshore component during the pollock roe season (January 1–April 15).

If approved, Amendment 23 to the GOA FMP would allocate 100 percent of the pollock TAC to the inshore component, except for reasonable amounts of bycatch for the offshore component, and 90 percent of the Pacific cod TAC to the inshore component.

If implemented, Amendments 18 and 23 would cease to have effect at midnight, Alaska local time, on December 31, 1995.

Regulations proposed by the Council to implement these amendments are scheduled to be published within 15 days of this notice.

List of Subjects 50 CFR Parts 672 and 675

Fisheries, Reporting and recordkeeping requirements.

Authority: 16 U.S.C. 1801 *et seq.*

Dated: December 6, 1991.

David S. Crestin,

Acting Director, Office of Fisheries Conservation and Management, National Marine Fisheries Service.

[FR Doc. 91–29653 Filed 12–6–91; 4:42 pm]

BILLING CODE 3510–22–M

Notices

Federal Register
Vol. 56, No. 239
Thursday, December 12, 1991

This section of the FEDERAL REGISTER contains documents other than rules or proposed rules that are applicable to the public. Notices of hearings and investigations, committee meetings, agency decisions and rulings, delegations of authority, filing of petitions and applications and agency statements of organization and functions are examples of documents appearing in this section.

DEPARTMENT OF AGRICULTURE

Federal Grain Inspection Service

Invitation To Serve on Federal Grain Inspection Service Advisory Committee

This notice corrects a notice (91–28246) published in the **Federal Register** November 27, 1991, (56 FR 60082) concerning nominations being sought for persons to serve 3-year terms on the Federal Grain Inspection Service Advisory Committee.

The November 27, 1991 notice reads: "Persons interested in serving on the Advisory Committee, or in nominating individuals to serve, should contact: John C. Foltz, Administrator, FGIS, room 1094–S, P.O. Box 96454, Washington, DC 20090–6454, in writing and request Form–755, which must be completed and submitted to the Administrator at the above address not later than January 27, 1991".

The notice is corrected to read: "Persons interested in serving on the Advisory Committee, or in nominating individuals to serve, should contact: John C. Foltz, Administrator, FGIS, room 1094–S, P.O. Box 96454, Washington, DC 20090–6454, in writing and request Form–755, which must be completed and submitted to the Administrator at the above address not later than January 27, 1992."

Dated: December 6, 1991.

John C. Foltz,

Administrator, Federal Grain Inspection Service.

[FR Doc. 91–29665 Filed 12–11–91; 8:45 am]

BILLING CODE 3410–EN–M

Food Safety and Inspection Service

[Docket No. 91–039N]

National Advisory Committee on Microbiological Criteria for Foods; Meetings

Pursuant to the Federal Advisory Committee Act (5 U.S.C., appendix I), notice is hereby given that Subcommittee meetings of the National Advisory Committee on Microbiological Criteria for Foods will be held on Monday through Thursday, January 13–16, 1992, in Atlanta, Georgia, at the Ritz-Carlton Hotel, 181 Peachtree Street, NE., Atlanta, Georgia 30303, telephone (404) 659–0400. The Committee provides advice and recommendations to the Secretaries of Agriculture and Health and Human Services concerning the development of microbiological criteria by which the safety and wholesomeness of food can be assessed, including criteria for microorganisms that indicate whether foods have been produced using good manufacturing practices.

Scheduled sessions are as follows:

1. Monday, January 13, 1 p.m. to 4:30 p.m., and Tuesday, January 14, 8:30 a.m. to 4:30 p.m.—Sessions of the Campylobacter Subcommittee;

2. Wednesday, January 15, 8:30 a.m. to 4:30 p.m.—Session of the HACCP Subcommittee; and

3. Thursday, January 16, 8:30 a.m. to 4:30 p.m.—Session of the Food Handling Subcommittee.

The Committee meetings are open to the public on a space available basis. Comments of interested persons may be filed prior to the meeting in order that they may be considered and should be addressed to Ms. Linda Hayden, Executive Secretariat, Food Safety and Inspection Service, U.S. Department of Agriculture, room 3175, South Agriculture Building, 14th and Independence Avenue SW., Washington, DC 20250. In submitting comments, please reference the docket number appearing in the heading of this notice. Background materials are available for inspection by contacting Ms. Hayden on (202) 720–9150.

Done at Washington, DC, on: December 6, 1991.

Ronald J. Prucha,

Acting Administrator.

[FR Doc. 91–29748 Filed 12–11–91; 8:45 am]

BILLING CODE 3410–DM–M

Forest Service

Rumpus/Lightning Timber Harvest; Nez Perce National Forest; Idaho Co. ID

AGENCY: Forest Service, USDA.

ACTION: Notice; intent to prepare environmental impact statement.

SUMMARY: The Forest Service will prepare an environmental impact statement (EIS) to analyze and disclose the environmental impacts of a proposal to harvest timber and construct, reconstruct, and recondition roads in the Big Elk Creek, Little Elk Creek, Lick Creek, and American River drainages about 10 miles north of Elk City, Idaho. This EIS will tier to the Nez Perce National Forest Land and Resource Management Plan and EIS, which provide overall guidance for achieving the desired future forest condition of the area. The purpose of the proposed action is to help satisfy short-term demands for timber and to move toward an equal distribution of timber age classes on suitable lands.

DATES: Written comments and suggestions should be received on or before January 13, 1992.

ADDRESSES: Send written comments to Jim Wiebush, District Ranger, Elk City Ranger District, P.O. Box 416, Elk City, Idaho 83525.

FOR FURTHER INFORMATION CONTACT: Peter Fischer, Supervisory Forester, (208) 842–2245.

SUPPLEMENTARY INFORMATION: The timber management activities under consideration would occur within an analysis area containing approximately 21,400 acres. This analysis area includes Inventoried Roadless Area 1227 and the five prescription watersheds listed above. The proposed timber harvest would directly affect about 1,240 acres of the analysis area. About 9 miles of road would be constructed, 14 miles reconstructed, and 10 miles reconditioned. Less than 10 percent of the 8,006-acre inventoried roadless area would be directly or indirectly affected by these activities.

Preliminary scoping including public and agency participation was completed in 1990. At that time, an Environmental Assessment (EA) and Finding of No Significant Impact (FONSI) were envisioned. Work proceeded on the EA,

but the Interdisciplinary Team gradually concluded that in the local context of the proposed action, the intensity of adverse impacts could be significant. In such cases, an Environmental Impact Statement (EIS) is required.

The local context of the proposed action includes the following:

1. All of the prescription watersheds in the analysis area have been designated "Stream Segments of Concern" by the State of Idaho. The state made this designation under antidegredation requirements of the federal Clean Water Act as specified by the U.S. Environmental Protection Agency. The designation means that Best Management Practices (BMPs) in addition to those specified in the Idaho Forest Practices Act and the Idaho Stream Channel Alteration Act may be required.

2. Big Elk Creek and Little Elk Creek are designated "Municipal Watersheds" in the Nez Perce Forest Plan. Idaho water quality standards for community public water use must be met.

3. All streams in the analysis area contain spawning habitat for chinook salmon. These fish have been proposed for listing under the Endangered Species Act.

4. All watersheds in the analysis area are presently below the Forest Plan objective of 90 percent of fish habitat potential. The Forest Plan permits timber management in below-objective watersheds concurrent with a "positive upward trend" in fish habitat conditions.

5. Roadless Area 1227 may be impacted.

6. The threatened grizzly bear and the endangered Northern Rocky Mountain gray wolf may reside or have suitable habitat in the analysis area.

The principal issues identified to date are:

1. Fish habitat and water quality, including means of BMP compliance, riparian management, and achievement of an upward trend in fish habitat conditions;

2. Wildlife, including impacts on threatened and endangered species and big game summer habitat;

3. Timber, including acres to be harvested and means of achieving regeneration of harvested acres within five years.

4. Roadless/Wilderness, including the extent and significance of impacts of Roadless Area 1227.

Development of alternatives is underway, and additional comments or questions are being solicited at this time. Consultation with the U.S. Fish and Wildlife Service will be initiated with regard to listed wildlife species. The Idaho Department of Health and Welfare—Division of Environmental Quality, the Idaho Department of Fish and Game, and the Nez Perce Indian Tribe will also be consulted. No public meetings are now scheduled, but they will be arranged if necessary.

While public participation in this analysis is welcome at any time, comments received within 30 days of the publication of this notice will be especially useful in the preparation of the draft EIS, which is expected to be filed with the EPA and available for public review in February, 1992. A 45-day comment period will follow publication of a Notice of Availability of the draft EIS in the **Federal Register**. The comments received will be analyzed and considered in preparation of a final EIS, which will be accompanied by a Record of Decision.

The Forest Service believes it is important at this early stage to give reviewers notice of several court rulings related to public participation in the environmental review process. First, reviewers of draft EISs must structure their participation in the environmental review of the proposal so that it is meaningful and alerts an agency to the reviewer's position and contentions. *Vermont Yankee Nuclear Power Corp.* v. *NRDC*, 435 U.S. 519, 513 (1978). Also, environmental objections that could be raised at the draft EIS stage but that are not raised until after completion of the final EIS may be waived or dismissed by the courts. *City of Angoon* v. *Hodel*, 803 F.2d 1016, 1022 (9th Cir. 1986) and *Wisconsin Heritages Inc.* v. *Harris*, 490 F.Supp. 1334, 1338 (E.D. Wis., 1980). Because of these court rulings, it is very important that those interested in this proposed action participate by the close of the 45-day comment period so that substantive comments and objections are available to the Forest Service at a time when it can meaningfully consider them and respond to them in the final EIS.

To assist the Forest Service in identifying and considering issues and concerns on the proposed action, comments on the draft EIS should be as specific as possible. It is also helpful if comments refer to specific pages or chapters of the draft statement. Reviewers my wish to refer to the Council on Environmental Quality Regulations for implementing the procedural provisions of the National Environmental Policy Act at 40 CFR 1503.3 in addressing these points.

I am the responsible official for this environmental impact statement.

Dated: December 6, 1991.

Michael King,

Forest Supervisor, Nez Perce National Forest, Route 2, Box 475, Grangeville, ID 83530.

[FR Doc. 91-29673 Filed 12-11-91; 8:45 am]

BILLING CODE 3410-11-M

Rural Electrification Administration

Agency Information Collection Under Office of Management and Budget (OMB) Review for REA Form 479, Financial and Statistical Report for Telephone Borrowers

AGENCY: Rural Electrification Administration, USDA.

ACTION: Expedited information collection request.

SUMMARY: The Rural Electrification Administration (REA) has requested the Office of Management and Budget (OMB) to approve the information collection of REA Form 479, Financial and Statistical Report for Telephone Borrowers (REA Form 479), on an expedited basis by December 31, 1991. Due to REA's request for an expedited review, REA is publishing the supporting statement for this information collection, in its entirety, in this notice.

DATES: Comments must be submitted on or before December 27, 1991.

ADDRESSES: Comments must be mailed to the Office of Information and Regulatory Affairs, Office of Management and Budget, room 3201, Washington, DC 20503; or to USDA, Office of Information Resources Management, room 408W, Administration Building, Washington, DC 20250; Attention: Mr. Don Hulcher.

FOR FURTHER INFORMATION CONTACT: Mr. Don Hulcher, address as above, (202) 720-6746.

SUPPLEMENTARY INFORMATION: REA has requested that OMB approve the information collection for REA Form 479 on an expedited basis in order to minimize the interruption of REA's ongoing financial and statistical analyses of its borrowers.

Each telephone borrower in the REA loan program signs a mortgage agreement that specifically requires the submission of annual, audited financial statements. In December of each year, REA sends copies of the Form 479 to its borrowers for the purpose of reporting its calendar year-end financial position and statistical data. The completed forms are due back to REA by the end of January. It is necessary for REA to receive this data as soon as possible after the end of the calendar year so that the Agency can interpret these financial

statements and carryout the requirements of the Rural Electrification Act.

REA has an obligation to assure the continued security for the Government's loans and evaluate the maintenance of adequate telephone service. Only through the analysis of the borrowers' financial statements can REA provide this assurance.

The Form 479 provides essential financial and statistical data that is used in the processing of loan applications and is also used to determine whether borrowers are in compliance with their mortgage (for example: Interest coverage and net worth requirements, allowable investments, and distributions of capital). Further, REA publishes an annual statistical report (REA Informational Publication 300–4) that contains a significant amount of data collected from the Form 479.

As mentioned above, the timely receipt of Form 479 is necessary in order for REA to provide reliable analysis of borrowers' operations and to ensure the Government's security for its loans. Because of the time needed by REA to complete its internal review of each borrower's financial condition and to enter this data into a statistical data base, it is imperative that REA receive the completed Form 479 as soon as possible after the end of the calendar year.

The supporting statement for the information collection associated with the Form 479 is as follows:

A. Justification

1. Circumstances That Make the Collection of Information Necessary

Rural Electrification Administration (REA) telephone borrowers have, through December 31, 1990, received nearly $9.6 billion in loans from REA, the Rural Telephone Bank (RTB), and loan guarantee commitments. REA Form 479, "Financial and Statistical Report, Telephone Borrowers," (Form 479) provides REA with (1) vital financial information needed to ensure the maintenance of the security for the Government's loans and (2) statistical data which enables REA to ensure the provision of quality telephone service as mandated by the Rural Electrification Act of 1936, as amended (RE Act). The Form 479 is submitted annually to REA unless the Administrator determines that loan security conditions require more frequent (i.e. quarterly) reporting as provided in the Mortgage.

The RE Act authorizes the Administrator to make loans for the purpose of providing telephone service to the widest practicable number of rural subscribers. The Form 479 is the basis for developing an applicant's current financial condition, upon which financial and statistical projections are based when determining the feasibility of an applicant's loan.

The RE Act also authorizes the Administrator to make studies, investigations, and reports concerning the progress of borrowers' furnishing of adequate telephone service and publish and disseminate this information. The Form 479 provides REA with the necessary financial and statistical data of each borrower needed to conduct these activities and produce such reports.

2. How, by Whom, and for What Purpose the Information Collected is Used and the Consequence if the Information is not Collected

The Form 479 (currently approved under OMB #0572–0031) is used extensively by REA for estimating toll revenues of telephone systems, for preparing the loan feasibility study to assure the loan can be repaid, and for compiling the Agency's Annual Statistical Report. The form is also the basis for a variety of other financial and statistical based studies performed throughout the year. These functions are essential to protect loan security and to achieve the objectives of the RE Act. The REA staff must be in a position to evaluate all factors related to the security of loans and the maintenance of adequate telephone service by borrowers on a continuing basis. Specifically, Form 479 serves the following purposes:

Loan Security: To carry out its responsibilities, the REA staff must be in a position to evaluate all factors related to the security of loans and the maintenance of adequate telephone service by REA borrowers on a continuing basis. The Form 479 allows REA to identify serious operating problems and take preventative or early corrective action. Through the use of the Form 479, deteriorating financial conditions can be detected at an early stage thereby avoiding the dangers of recognition at an advanced stage when only difficult, costly solutions would be available. REA must have the means of maintaining the capability to ascertain the continuity of security for the Government's loans which constitute the major portion of the capitalization of these telephone companies.

Mortgage Compliance: The Government's mortgage instrument contains provisions to assure achievement of the objectives of the RE Act and continuing security for the Government's investment. One of the most effective means REA has to police these provisions is analysis of the Form 479 which provides data in such important areas as: Grades of service; the dollar amounts expended by system maintenance programs; provisions for depreciation; general funds levels; and the extent of coverage for interest and principal payments. The Form 479 also provides information regarding the extent to which service is being provided on an area coverage basis, a legal provision of the RE Act. Subscriber data is also provided and, when properly analyzed, this data allows REA the ability to track a borrower's progress in achieving subscriber projections which support the Government's loans. In addition, the Form 479 provides information on activities prohibited by the mortgage, such as the excessive distributions of capital (including dividend distributions), which might adversely affect loan security, quality of service, or reasonableness of rates.

Loan Processing: When preparing a feasibility study for the processing of a loan application, the Form 479 is necessary in order to derive a borrower's current financial and statistical operating experience. With the broad range of interest rates applicable to REA and RTB loans and loan guarantees, fairness and the need for accurate measurements of a borrower's operating characteristics demand that current and valid data be utilized in determining the eligibility of a borrower for each type of loan or loan guarantee and the applicable interest rate for that loan. The Form 479 is the most convenient method of deriving this information for both the borrower and the Government.

Field Staff Utilization: REA relies heavily on the evaluations of its borrowers by its General Field Representatives (GFR). GFRs monitor the progress of telephone systems within their territory using as a basis for that review the financial and statistical data reported by borrowers on the Form 479. With the added advantage of on-site visits, GFRs using the Form 479 can detect difficulties before they become large problems and advise adequate remedial action for problems related to loan security, management, and quality of service. Without the Form 479, the GFRs have a very limited basis for determining the trend of the borrower's operations and for taking action in the interest of rural ratepayers, the Government, and the borrower. Without the use of the Form 479 as a tool, there would be a significant loss of effectiveness by the GFR.

3. Use of Improved Information Technology for the Collection of Data

Consideration has been given to allowing borrowers to submit standardized data (such as the Form 479) by computer over telephone lines. REA is working towards achieving the implementation of electronic data transmission between it and its borrowers; however, due to a variety of existing technologies, REA is continuing to search for a uniform, compatible medium in which to begin the implementation of some form of electronic data submission.

4. Efforts to Identify Duplication

The operating and financial condition of a telephone system changes monthly; therefore, information in REA files which is collected annually would not be duplicative.

5. Why Similar Information Available Cannot be Used

Although telephone systems are required to keep their books in accordance with Federal Commuunications Commission (FCC) Uniform System of Accounts, this would be more information than is currently needed by the REA staff in carrying out its responsibilities. If the borrowers were required to submit their books to REA, it would add greatly to their burden of reporting on their operating conditions.

6. Methods to Minimize Burden of Small Business Entities

The information required to complete Form 479 is readily available to the borrower from the records it is required to maintain for the FCC. The burden placed on small entities is minimized because the information collected on the Form 479 may be taken directly from these records. The Form 479 is the least information needed in order for REA to fulfill its obligation of monitoring, analyzing, and reporting the financial and operating condition of its borrowers.

7. Consequences if the Information Collection were Less Frequent

Without the annual submission of the Form 479, REA can not effectively monitor each borrower's operations to properly assure continued security for the Government's loans and borrower compliance with the provisions of its mortgage.

8. Any Inconsistency with Guidelines in 5 CFR 1320.6

This collection is consistent with 5 CFR 1320.6.

9. Consultations with Persons Outside the Agency

Each telephone borrower signs a mortgage agreement that specifically requires the submission of annual, audited financial statements. Therefore, all borrowers are fully aware of the reporting requirements and additional consultations are not made.

10. Confidentiality Provided to the Respondents

All information on the Form 479 is available under the Freedom of Information Act and is not confidential.

11. Questions of a Sensitive Nature.

This collection does not contain any questions of a sensitive nature, such as sexual behavior and attitudes, religious beliefs, and other matters that are commonly considered private.

12. Annualized Costs to the Federal Government and Respondents

Annualized Costs to the Federal Government:	
Data processing and analysis @ $12.00/hr. × 2.5 hrs. × 950 responses	$28,500
Printing	500
Mailing	500
Total	$29,500
Annualized Costs to the Respondents:	
Data collection, transcription and review: @ $12.00/hr. × 11 hrs. × 950 responses	$125,400
Typing @ $7.00/hr. × 3 hrs. × 950 responses	19,950
Mailing 2@ $0.30/hr. × 950 responses	285
Total	$145,635

13. Estimate of Burden Hours

Data collection, transcription, and review: 11 hrs. × 950 responses	10,450 hrs.
Typing: 3 hrs. × 950 responses	2,850hrs.
Total	13,300 hrs.

This form is submitted by approximately 950 independent telephone systems in the U.S. Since most of these systems have been submitting the form for many years and the information is already on their year-end books in some form, it is only a matter of taking this information and transcribing it to the required format. As noted in the response to question A 1, the forms are submitted annually unless the Administrator determines that loan security conditions require more frequent submissions. Any record keeping burden is currently recorded under number 0572–0031.

14. Change in Burden

Although REA has made several revisions to its rules and regulations since the last supporting statement for this information collection was approved, the minor revisions to the Form 479, necessary in order to update current operating procedures, will not increase the individual reporting requirements (of 14 hours per respondent) of the respondents. The previous supporting statement estimated total burden to be 14,000 hours. That estimate was based on 1,000 respondents at 14 hours per response. The reduction in total burden hours is due to the new estimate being based on 950 respondents at 14 hours per response, totalling 13,300 hours.

15. Plans for Tabulation, Statistical Analysis, and Publication

Copies of the Form 479 are mailed to borrowers generally during the last week of December and are to be returned to REA headquarters in Washington by the end of January. Most of the information collected is published in REA Informational Publication 300–4, "Statistical Report, Rural Telephone Borrowers." This informational publication is published annually, generally in July. In addition to the statistical analysis performed as noted in A 2 above, numerous tables and charts are prepared for inclusion in Informational Publication 300–4.

B. Collections of Information Employing Statistical Methods

This information does not employ statistical methods.

Dated: December 5, 1991.

Michael M.F. Lui,

Acting Administrator.

[FR Doc. 91–29747 Filed 12–11–91; 8:45 am]

BILLING CODE 3410–15–M

DEPARTMENT OF COMMERCE

International Trade Administration

[A–570–007]

Barium Chloride From the People's Republic of China Determination Not To Revoke Antidumping Duty Order

AGENCY: International Trade Administration/Import Administration, Department of Commerce.

ACTION: Notice of determination not to revoke antidumping duty order.

SUMMARY: The Department of Commerce is notifying the public of its determination not to revoke the

antidumping duty order on barium chloride from the People's Republic of China.

EFFECTIVE DATE: December 12, 1991.

FOR FURTHER INFORMATION CONTACT: Michael Rill or Richard Rimlinger, Office of Antidumping Compliance, International Trade Administration, U.S. Department of Commerce, Washington, DC 20230; telephone: (202) 377–4733.

SUPPLEMENTARY INFORMATION: On October 1, 1991, the Department of Commerce ("the Department") published in the **Federal Register** (56 FR 49742) its intent to revoke the antidumping duty order on barium chloride from the People's Republic of China (49 FR 40635, October 17, 1984). The Department may revoke an order if the Secretary concludes that the order is no longer of interest to interested parties. We had not received a request for an administrative review of the finding for the last four consecutive annual anniversary months and therefore published a notice of intent to revoke pursuant to § 353.25(d)(4) of the Department's regulations (19 CFR 353.25(d)(4)).

On October 28, 1991, Chemical Products Corporation, the petitioner in this antidumping proceeding, objected to our intent to revoke the order. Therefore, we no longer intend to revoke the order.

Dated: December 2, 1991.

Joseph A. Spetrini,

Deputy Assistant Secretary for Compliance.

[FR Doc. 91–29771 Filed 12–11–91; 8:45 am]

BILLING CODE 3510–DS–M

[A–588–504]

Erasable Programmable Read Only Memories From Japan

AGENCY: Import Administration, International Trade Administration, Department of Commerce.

ACTION: Preliminary scope ruling.

SUMMARY: We preliminarily determine that certain Flash memory devices based on Erasable Programmable Read Only Memory (EPROM) semiconductor technology are later-developed products within the scope of the suspended investigation and suspension agreement on EPROMs from Japan. Specifically, EPROM-based memory devices with electrical-erase capability are not exempt from the suspension agreement. We have notified the U.S. International Trade Commission (the Commission) of our determination.

EFFECTIVE DATE: December 12, 1991.

FOR FURTHER INFORMATION CONTACT: Jay J. Camillo or Melissa G. Skinner, Office of Antidumping Compliance, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue NW., Washington, DC 20230; telephone (202) 377–4851.

SUPPLEMENTARY INFORMATION:

Background

Request

On May 30, 1991, Intel Corporation (Intel), Advanced Micro Devices Inc. (AMD), and National Semiconductor Corporation (National) (collectively petitioners), requested that the Department of Commerce (the Department) clarify the scope of the outstanding suspension agreement on Erasable Programmable Read Only Memories (EPROMs) from Japan. Specifically, petitioners requested that the Department rule that Flash memory devices based on EPROM technology (Flash EPROMs) [1] are included within the scope of the suspension agreement on EPROMs. Petitioners asserted that the Flash EPROM should be found to be within the scope of the suspension agreement because of the structural and functional similarities between Flash EPROMs and EPROMs.

On June 19, 1991, we invited interested parties to comment on the petitioners' request. We received comments from NEC Corporation, Hitachi Corporation, Toshiba Corporation, and Mitsubishi Electric Corporation (respondents). Respondents argue that Flash memory devices were clearly intended to be included from the scope of the suspension agreement because, although certain Flash devices existed at the time of the suspension agreement, petitioners did not mention the Flash memory devices in their petition, and the Commission and the Department did not mention Flash memory devices in their determinations. Respondents also argue that Flash memory devices (both Flash EPROMs and Flash E²PROMs) most closely resemble E²PROMs which were found to be a different like product from EPROMs by the Commission. Respondents further analyze the criteria listed in § 353.29(i)(2) of the Department's regulations (19 CFR 353.29(i)(2) (1991)) and conclude that Flash memory devices should be excluded from the scope of the suspension agreement.

We received rebuttal comments from petitioners in which they identify "Flash EPROMS," as the merchandise they seek to include within the scope of the suspended investigation, and "Flash E²PROMs," which petitioners agree are excluded from the scope of the investigation. The Department restricts this proceeding to the clarification of the scope status of the Flash memory device based on EPROM technology, henceforth referred to as the Flash EPROM. The Department included all submissions received before August 9, 1991, the deadline for petitioners' rebuttal comments, in this preliminary decision. All submissions received after August 9, 1991 will be addressed in the final determination.

Case History

The original investigation and the suspension agreement cover EPROMs. The Department defined EPROMs as:

> [A] type of memory integrated circuit that [is] manufactured using variations of Metal Oxide-Semiconductor (MOS) process technology, including both Complimentary (CMOS) and N-Channel (NMOS). (Erasable Programmable Read Only Memories (EPROMs) from Japan; Final Determination of Sales at Less Than Fair Value, 51 FR, at 39681, October 30, 1986.)

Data stored on EPROMs are erased through exposure to ultraviolet (UV) light. (Flash EPROMs, Flash E²PROMs, erase their stored data electrically.) [2] In its final determination, the Commission addressed several like product issues and determined that:

> E²PROMs are a different like product from the articles subject to investigation, since

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[1] Although respondents argued that Flash memory devices are not commonly referred to as Flash EPROMs or Flash Electrically Erasable Programmable Read Only Memories (E²PROMs), there are examples of Flash memory devices based on EPROM technology being referred to as Flash EPROMs and Flash memory devices based on E²PROM technology being referred to as Flash E²PROMs. Several references of this nature can be found in professional and legal journals such as the Journal of Solid State Electronics, IEDM Technology Digest, and the Official Journal of the European Communities.

Partially because of the apparent acceptance of these terms by professional and legal journals, we have decided to adopt petitioners' classification of the Flash EPROM and the Flash E²PROM. Because use of this nomenclature would seem to prejudice this case in favor of the petitioners, however, we did not adopt this terminology merely to provide semantic differentiation or textual simplification. As this document will later discuss, the Flash EPROM closely resembles the EPROM in structure and function and the Flash E²PROM closely resembles the E²PROM in structure and function. These similarities buttress the petitioners' contention that Flash devices are named according to their structures and functions and that there are two Flash memory devices, the Flash EPROM and the Flash E²PROM. The fact that professional journals referred to a Flash memory device based on E²PROM as a "Flash E²PROM" lends further support to this argument.

[2] In their rebuttal comments, however, petitioners state that their Flash EPROM die is capable of being erased both electrically and through exposure to UV light.

they are different in design and function from EPROMs. Because of their more complicated technology, E²PROMs are significantly more expensive than EPROMs. (Erasable Programmable Read Only Memories from Japan, USITC Publication 1927, December, 1986 at 9.)

The Commission further stated:

[W]hile the memory characteristics of E²PROMs are almost identical to those of EPROMs, we conclude that the difference in technology responsible for the characteristic of electrical erasability renders them different from EPROMs. (*id.* at 9.)

In reference to the issue of whether the one-time-programmable (OTP) EPROM (which is encased in plastic and does not contain a window) is the same like product as EPROMs, the Commission concluded that a difference in packaging which results in the erasability or non-erasability of a semiconductor product was:

[N]ot a sufficient difference in the characteristics and uses of OTPs and ceramic-packaged EPROMs to render them separate like products. The chip maintains its essential characteristics and uses, even though its packaging renders it unerasable by end users. (*Id.*, at 8 and 9.)

Documents from the underlying proceeding deemed relevant by the Department to the scope of the suspension agreement were made a part of the record in the instant scope review. In completing its analysis, the Department considered any written arguments that interested parties submitted within the specified time limits. Documents that were not presented to the Department or placed by it on the record do not constitute part of the administrative record of this scope proceeding.

Arguments

Petitioners

Petitioners argue that:

Flash [EPROMs are] a derivative of and a natural evolution from historic EPROM non-volatile memory technology. (Suspended Antidumping Investigation Concerning EPROMs from Japan; Application Requesting A Scope Determination on Flash Memories Based on EPROM Technology, May 30, 1991 at 2.)

Petitioners assert that Flash EPROMs are sufficiently similar to EPROMs in structure and function to be found within the scope of the suspension agreement. Petitioners offer the two following criteria, in order of importance, to evaluate the classification of Flash EPROMs: (1) Transistor cell structure and (2) Erasure increments.

(1) Transistor Cell Structure

Petitioners state that EPROMs are more similar to EPROMs than they are to E²PROMs or Flash E²PROMs because Flash EPROMs and EPROMs are both based on a one transistor cell structure, whereas Flash E²PROMs have a two-transistor cell structure like E²PROMs.[3]

E²PROMs and Flash E²PROMs require large cells (eo microns²) to accommodate two transistors. E²PROM's and Flash E²PROM's need for large cells inflates the devices' costs. Two transistor cell devices' prices are thus significantly higher than one transistor cell devices. Flash E²PROMs, like their E²PROM cousins "do not compete with EPROMs (yet) because of higher costs." (Petition for the Imposition of antidumping Duties Pursuant to the Tariff Act of 1930, as amended, September 30, 1985, at 9 and Erasable Programmable Read Only Memory Semiconductors ("EPROMs") from Japan, August 9, 1991, at 6). EPROMs and Flash EPROMs feature one transistor cell structures that are smaller (14 microns²), and therefore, cheaper than their E²PROM and Flash E²PROM cousins.

(2) Erasure Increments

In addition to the cost differences between Flash E²PROMs and Flash EPROMs that arise from the selection of different transistor cell structures, there are functional differences. Flash EPROMs, like EPROMs, because of their smaller one transistor cells that lack select gates, cannot erase specific byte addresses. (In a two transistor cell product [E²PROM or Flash E²PROM], the select gate of a two transistor device allows the user to select individual bytes or very small sectors to erase.) Intel's 128K Flash EPROM can only erase four large blocks in the following byte increments:

- one 8K block
- two 4K blocks
- one 112K block

The petitioners find the cell structure and erasure increment similarities between EPROMs and Flash EPROMs to be sufficient grounds for including Flash EPROMs in the scope of the suspension agreement. The petitioners agree that all two transistor cell-based Flash E²PROMs are excluded from the scope of the suspension agreement.

To bolster their arguments, petitioners state that an analysis of the criteria listed under § 353.29(i)(2) also confirms that the Flash EPROM should be found within the scope of the suspension agreement. The petitioners' criteria analysis is presented below.

Physical Characteristics

In addition to the cell structure similarities discussed above, petitioners state that Flash EPROMs and EPROMs are manufactured in the same fashion, and share the same primary function of "non-volatile storage of memory with the ability to bulk erase and reprogram." (Application Requesting a Scope Determination on Flash Memories Based on EPROM Technology, May 30, 1991, at 9.)

Expectations

Petitioners argue that users of Flash EPROMs and EPROMs have identical expectations: "erasable, programmable ROM." (*Id.* at 10.)

Ultimate Use

Petitioners state that EPROMs and Flash EPROMs have the same ultimate use: "non-volatile, bulk-erasable, read-only memory." (*Id.* at 10.) Petitioners argue that Flash EPROMs and EPROMs are different than E²PROMs or Flash E²PROMs because Flash EPROMs are mostly bulk erasable and EPROMs are bulk erasable, whereas E²PROMs and Flash E²PROMs are byte or small sector erasable, and because EPROMs and Flash EPROMs are more dense, and therefore, less expensive then E²PROMs and Flash E²PROMs. Petitioners also allege that Flash EPROMs will be used in the same applications as EPROMs. Specific mutual end uses between Flash EPROMs and EPROMs are presented below.

- desktop, laptop and handheld computers
- laser printer font cartridges
- network controllers
- medical instrumentation
- disk drive controllers
- automotive systems
- telephone switching equipment

Petitioners distinguish between the end uses of Flash EPROMs and E²PROMs. They state that E²PROMs, in contrast to Flash EPROMs and EPROMs, "are used for high speed partial

[3] In a semiconductor cell, floating, control, and select gates function as transistors. A one transistor cell, for example, like the EPROM or Flash EPROM, contains to control gate and a floating gate, positioned in a stacked structure. This type of semiconductor structure is referred to as a one transistor cell device, because, owing to the stacked gate structure, voltage needs to be applied to only one location of the cell, the control gate. E²PROMs and Flash E²PROMs contain select gates in addition to floating gates and control gates. In an E²PROM or a Flash E²PROM, voltage needs to be applied to both the control gate and the select gate. The select gate is considered an additional transistor. These devices are therefore referred to as two transistor cell structure devices. (Memorandum to File, November 18, 1991.)

reprogramming applications (such as assembly line robotics)." (*Id.* at 10.)

Trade Channels

Petitioners contend that the Flash EPROM and the EPROM "are sold through the same channels of trade and are carried by the same distributors." (*Id.* at 11.)

Respondents

All of the respondents assert that because Flash memory devices existed at the time of the investigation, yet were not included in the original petition, the Commission's determination, or the Department's determination, that the petitioners, the Department and the Commission did not intend to include Flash in the scope of the suspension agreement. In addition, respondents argue that because the Commission found E²PROMs to be a separate like product and did not find Flash EPROMs to be a like product, other electrically erasable devices are similarly considered separate like products. Respondents stress that electrical erasability, which the petitioners identified as the "one important" difference between E²PROMs and EPROMs, was sufficient to compel the Commission to classify the E²PROM as a separate like product. Hitachi quotes directly from the petitioner's 1985 petition regarding the description of the E²PROM:

E²PROMs (Electrically Erasable Programmable Read Only Memories) *differ from EPROMs only in one important sense.* E²PROMs can be electrically erased and reprogrammed without ultraviolet light * * *. These newer devices [E²PROMs] do not compete with EPROMs yet because of higher costs. (Erasable Programmable Read Only Memory Semiconductors ("EPROMs") from Japan, July 25, 1991 (Hitachi) at 5, and Erasable Programmable Read Only Memory Semiconductors ("EPROMs") From Japan; Scope Inquiry, July 25, 1991 (NEC) at 13.)

In reference to the Commission's classification of the E²PROMs as a separate like product, Toshiba states:

After considering the physical appearance, customer perceptions of the Article, common manufacturing facilities and production employees, channels of distribution and interchangeability between the EPROM and [E²PROM] products, the Commission concluded that E[²]PROMs were a different like product than the EPROMs subject to the investigation. The reason for the exclusion of E[²]PROMs was unequivocally articulated in the determination— erasure by electrical means. (Suspended Antidumping Investigation Concerning EPROMs from Japan; Scope Inquiry, July 25, 1991 (Toshiba) at 10 and 11.)

In reference to the Department's determinations, all respondents state that although the Flash E²PROM existed at the time of the investigation, the Department conspicuously excluded any reference to it. NEC states:

The Department included only EPROMs in the scope of its investigation * * *. There is no mention of electrically erasable memories of any kind * * *. (NEC, July 25, 1991, *op. cit.*, at 14.)

Physical Characteristics

Respondents cite various physical differences between EPROMs and Flash EPROMs. Respondents believe that these differences support their contention that the Flash EPROM is closer in physical structure to the E²PROM and should be excluded from the scope of the suspension agreement. The major differences between EPROMs and Flash EPROMs that respondents cite are presented below.

- Thin gate oxide.
- Overerase circuitry.
- Packaging.
- Size.
- Erasure method and erasability increments.

Thin Gate Oxide

Mitsubishi observes that:

The memory cells of flash memory devices have a first gate thickness of roughly 100 [angstroms] * * *. In contrast, the oxide thickness of the first gate of an EPROM cell is typically 300–400 [angstroms].

(Erasable Programmable Read Only Memory Semiconductors from Japan; Opposition to Application Requesting a Scope Determination on Flash Memories Based on EPROM Technology, July 25, 1991 (Mitsubishi) at 7, Hitachi, July 25, 1991, *op. cit.*, at 9, and Toshiba, July 25, 1991, *op. cit.*, at 18.)

Respondents argue that thickness of gate oxide is of paramount importance in this case because 100 angstrom thick gate oxide must surround the floating gate of a semiconductor cell in order to conduct electrical erasure.

Overerase Circuitry

Toshiba observes that petitioners' choice of a one transistor cell structure in order to economize on size required the petitioners to equip Flash devices with anti-overerase circuitry that is not present in the EPROM.

Intel addressed the overerase problem by adding additional circuitry to its Flash device—known as "Intelligent Erase." (Toshiba, July 25, 1991 *op. cit.*, at 20.) [4]

[4] Overerase occurs when unprogrammed cells of chips are erased electrically. Erasing unprogrammed cells damages the cells by making them more susceptible to error. EPROMs do not contain extra anti-overerase circuitry because EPROMs are not electrically erased and, therefore, do not have to prevent overerasure. The petitioners' Flash EPROM product is susceptible to overerasure problems because of the design structure that petitioners chose for the Flash EPROM. Specifically, the petitioners' choice of a one transistor cell structure, in order to minimize the size of the Flash EPROM, required the incorporation of extra circuitry to prevent overerasure. Flash E²PROM producers, who choose to forego economizing on chip size, will manufacture two transistor cell structures and not need to incorporate additional circuitry into their Flash E²PROMs to prevent overerasure. (Electronics, November 2, 1990, at 44–50, also Toshiba, July 25, 1991, op. cit., at 19-20.)

Packaging

Several of the respondents observe that the Flash EPROM's packaging differs from that of a traditional UV EPROM because the Flash EPROM does not require the incorporation of a window onto the package to permit UV rays to enter the device.[5]

In contrast to the windowless Flash EPROM, Hitachi argues:

The E[P]ROM['s] need for exposure to ultraviolet light for erasure, however, requires a unique and visible physical difference. To be erasable by ultraviolet light, an E[P]ROM must have a glass window in the package that exposes the chip itself in order to allow ultraviolet light to erase the programmed data. This is a unique and extremely important distinction. (Hitachi, July 25, 1991 *op. cit.*, at 8, Toshiba, July 25, 1991, *op. cit.*, at 23 and NEC, July 25, 1991, *op. cit.*, at 19.)

Size

Respondents allege that the Flash EPROM is physically larger and consequently more expensive than the EPROM.

Because of the unique physical changes necessary for Flash, discussed above, there is a need for more area on the chip. Just as was the case for the E²PROM, the increased area necessary for the Flash device results in increased costs. While the increased area is not as large as for non-Flash E²PROMs, the changed cell structure or additional circuitry is still significant, and requires more area than conventional EPROMs. (Toshiba, July 25, 1991, *op. cit.*, at 21.)

Erasure Method and Erasability Increments

NEC argues that Flash's characteristic of electrical erasability is the product's most important physical attribute.

[F]lash memories and E²PROMs share an all important feature—electrical erasability—which is not shared by EPROMs * * * [T]his feature determines the unique character and

[5] Flash EPROMs are housed in plastic containers, whereas EPROMs are housed in ceramic containers with windows. (It should be noted that the Commission concluded that a difference in packaging between chips that changes the chips' erasure properties without altering the chips' essential characteristics and uses is not a sufficient difference to render chips separate like products.) (Erasable Programmable Read Only Memories from Japan, USITC Publication 1927, December 1986 at 8.)

applications of Flash memories and distinguishes them from EPROMs. (NEC, July 25, 1991, *op. cit.*, at 18, and Hitachi, July 25, 1991, *op. cit.*, at 7.)

In addition to the "physical difference" of electrical erasability, respondents state that Flash EPROMs, like E²PROMs, are capable of conducting section-by-section erasure.

Expectations of the Ultimate Purchasers

Toshiba argues that Flash EPROM customers will purchase Flash EPROMs because they have totally different expectations than purchasers of EPROMs.

It is clearly understood in the industry that the primary reason an end user selects the Flash device rather than the EPROM, and pays the price premium, is Flash's ability for electrical erasure and on-board reprogramming . . . [E]nd users seek the Flash device over EPROMs because of the "two functional advantages over EPROMs—fast erasure and in-circuit reprogrammability." (Toshiba, July 25, 1991 *op. cit.*, at 24 and 25, Hitachi, July 25, 1991 *op. cit.*, at 10, and Mitsubishi July 25, 1991, *op. cit.*, at 14.)

Toshiba argues that customers choose Flash EPROMs because they can be erased in-board in 10 seconds. EPROMs, conversely have to be removed from their sockets to be erased through exposure to ultraviolet (UV) light. UV erasure takes between 20 and 30 minutes. Toshiba argues that these different product specifications give rise to completely different customer expectations. (Toshiba, July 25, 1991, *op. cit.*, at 25.) Toshiba states that customers who foresee a need to reprogram their chips frequently will select Flash EPROMs. Those who do not need to reprogram their chips frequently will select EPROMs.

Toshiba also predicts that Flash EPROMs will remain at least 50% more expensive than EPROMs through 1994 and beyond because Flash EPROMs will remain less dense than EPROMs.

[T]he physical differences in size and architecture related to thin oxide and overerase result in a significant cost difference. Consequently, the FLASH device clearly carries a higher price than EPROMs, particularly at the higher densities. EPROMs devices, therefore, because of their size, simplicity and ease of manufacture should continue to be ahead of FLASH in terms of price. FLASH prices through 1994 and beyond are projected for be at least 50% higher than EPROM prices. (Toshiba, July 25, 1991, *op. cit.*, at 26.)

Ultimate Use

Toshiba states that:

Flash will capture EPROM market share only where the key features of electrical erasability and on-board reprogrammability—features not possessed by the EPROM are desired. (Toshiba, July 25, 1991, *op. cit.*, at 31.)

Toshiba predicts that there will be limited overlap between the Flash and EPROM markets. Therefore, ultimate use of Flash EPROMs and EPROMs will not overlap extensively. Respondents argue that Flash EPROMs will erode will the market share of magnetic storage media such as hard disk drives:

The FLASH device is expected to make significant inroads into the market for hard disk drives in the next five years. (Toshiba, July 25, 1991, *op. cit.*, at 32, Mitsubishi, July 25, 1991, *op. cit.*, at 9, and NEC, July 25, 1991, *op. cit.*, at 28.)

Toshiba states that the EPROM could not replace hard drives because it lacks on-board reprogramming and electrical erasability.

Channels of Trade

All respondents acknowledge that EPROMs and Flash EPROMs have identical channels of trade. Respondents, however, contend that this criterion is irrelevant because all semiconductor products have the same channels of trade. In reference to channels of trade, NEC argues:

[I]n the market for semiconductor products, a broad range of different devices that have been recognized as different classes or kind of merchandise—DRAMs, SRAMs, Flash Memories, E²PROMs, microprocessors, EPROMs—all move within the same channels of trade. (NEC, July 25, 1991, *op. cit.*, at 32, Toshiba, July 25, 1991 *op. cit.*, at 35, and Hitachi, July 25, 1991, *op. cit.*, at 11.)

Petitioners' Rebuttal Comments

Petitioners argue that:

Flash EPROMs and UV (ultra-violet) EPROMs are the same class or kind of merchandise because they implement the same technology to perform the same function. The only difference between the two devices is that Flash EPROMs can be bulk erased electrically as well as with UV light. Flash EPROMs are made in the same factories, using the same equipment and workers and a virtually identifical process. (*Erasable Programmable Read Only Memory Semiconductors ("EPROMs") from Japan's Scope Inquiry*, August 9, 1991, (Petitioners), at 1.)

Petitioners argue that the Flash EPROM represents the lastest step in traditional EPROM technology. Petitioners state that thin gate oxide technology could not be incorporated into dense EPROM technology in 1986. By 1988, however, petitioners claim to have successfully incorporated thin gate oxide technology into EPROM architecture for the first time.

At the time of the original investigation, [1985–1986] the technical capability erase through Fowler-Nordheim tunneling using EPROM technology did not exist. (*Id.* at 13.)

[T]he FLASH EPROMs perfected by Intel and first sold at the end of 1988 represent the natural evaluation of EPROM technology. The electrical erasability that FLASH EPROMs offer represents a technologically[-]advanced feature of a continually[-]evolving product. (*Id.* at 4.)

Petitioners argue that the two transistor cell Flash E²PROM is based on E²PROM technology. Because of its larger cell size, it is more expensive than a Flash EPROM and does not compete with the Flash EPROM. Petitioners state that the one transistor cell Flash EPROM is based on EPROM technology, resembles an EPROM, and should therefore be included in the scope of the investigation. (*Id.* at 6.)

Petitioners argue that Flash EPROMs are properly considered EPROMs because they utilize EPROM cell structure that are merely equipped with 100 angstrom thick gate oxide rendering them both electrically and UV erasable. (*Id.* at 1.) Petitioners point out that their current 0.8 micron EPROM also utilizes 100 angstrom thick gate oxide. (*Id.* at 7.)

In reference to respondents allegations that the Flash EPROM is excluded from the scope of the suspension agreement (1) because petitioners allegedly excluded the Flash EPROM from the scope of the suspension agreement, and (2) because the classification of the E²PROM by the ITC as a separate like product excludes all electrically-erasable devices, petitioners state:

THE RECORD ESTABLISHED IN THE UNDERLYING INVESTIGATION DOES NOT EXCLUDE FLASH EPROMS SINCE THE CRUCIAL TUNNELING TECHNOLOGY WAS NOT POSSIBLE FOR EPROMS AT THE TIME OF THE ORIGINAL INVESTIGATION AND, IN ANY EVENT, RESPONDENTS INCORRECTLY INTERPRET THE EXCLUSION OF E²PROMs TO APPLY TO FLASH EPROMS. [Emphasis in Original.] (*Id.* at 10.)

Petitioners state that the Flash memory device that existed in 1984 was clearly based on E²PROM technology.

[Toshiba's 1984 Flash device] contains a selection transistor and a floating gate transistor. This design clearly is based on the two transistor structure of an E²PROM. (*Id.* at 11.)

Petitioners state that incorporating Flash technology into EPROM technology has allowed petitioners to drastically lower Flash EPROM prices.

For any given density, a Flash EPROM is much smaller than a Flash E²PROM and therefore much cheaper. (*Id.* at 18.)

Petitioners argue that the price differential between Flash EPROMs and EPROMs is steadily narrowing due to Flash EPROM's small, EPROM-based one transistor cell structure. Petitioners predict that as the price differential between Flash EPROMs and EPROMs continues to narrow, these products will begin to become more price competitive. Flash E²PROMs, conversely, will not compete with EPROMs because of their higher cost.

> Flash E²PROMs are two times or more costly to produce than FLASH EPROMs and generally are not competitive for the same applications. (*Id.* at 19.)

As further evidence of the replacement of EPROMs by Flash EPROMs, petitioners observe that several of the EPROM manufacturers represented in the petition have announced that they will discontinue production of EPROMs above the four megabyte level because of the difficulty of utilizing UV erasure at densities above four megabytes.

> AMD will likely convert to solely Flash EPROM production at some future generation beyond the 4Mb level. Petitioners expect that NEC likely will take the same strategy sometime after the 4Mb generation. (*Id* at 24.)

Petitioners provide data that supports their contention that Flash EPROMs are replacing EPROMs in the automobile industry despite Flash EPROM's higher price. In addition, petitioners state that Flash EPROMs replace EPROMs in 56% of EPROM's applications. (*Id.* at 21.)

Analysis

For purposes of determining whether the merchandise in question is within the scope of the suspension agreement on EPROMs from Japan, we referred to § 353.29 of the Department's regulations on antidumping scope determinations. 19 CFR 353.29 (1991). On matters concerning the scope of a suspension agreement, as in matters concerning the scope of an antidumping duty order, we first determine whether the descriptions of the product contained in the petition, the initial investigation, and the Department's and Commission's determinations are dispositive. If these descriptions are not dispositive, the Department refers to the remaining provisions of § 353.29, as appropriate. In the instant case, we determine that the descriptions of the product contained in the petition, the initial investigation, and the determinations of the Department and the Commission are not dispositive as to whether the Flash EPROM was included in the scope of the suspension agreement or underlying investigation. In other words, the Flash EPROM was not specifically included in, or excluded from the scope of the investigation or suspension agreement.

At the initiation of an antidumping investigation, the Department's first task is to define the class or kind of products subject to the investigation. The Department normally relies on the petitioner's description of the allegedly-dumped merchandise to define the class or kind of merchandise subject to the investigation. The scope of each investigation includes one class or kind of merchandise.

In the EPROM case, the Department adopted the petitioner's description of the subject merchandise. The petitioners defined EPROMs as:

> [A] type of memory integrated circuit that [is] manufactured using variations of Metal Oxide-Semiconductor process technology, including both Complimentary (CMOS) and N-Channel (NMOS). the products include processed wafers, dice and assembled EPROMs produced in Japan and imported directly or indirectly into the United States. (Petition for the Imposition of Antidumping Duties Pursuant to the Tariff Act of 1930, As Amended, September 30, 1985 at 4 and 5. See also 51 FR 151 August 6, 1986 at 28253 (Suspension of Investigation) and 56 FR August 7, 1991 at 37523 (Revised Suspension Agreement)).

The Commission utilized the petitioners' description of the subject merchandise and the Department's class or kind description in order to formulate its like product determination.[6] The Commission defined the like product as:

> EPROMs, both NMOS and CMOS, including EPROM wafer/dice, assembled EPROMs and OTPs, but excluding E²PROMs. (Erasable Programmable Read Only Memories From Japan, USITC Publication 1927, September, 1986, at 10.)

Respondents argue that because Flash memory devices existed at the time of the investigation, yet were not included in the original petition, the Commission's determination, or the department's determination, that the petitioners, the Department, and the Commission did not intend to include Flash memory devices in the scope of the suspension agreement. However, we observe that the petition, and the Department's and Commission's notices do not specifically exclude the Flash EPROM from the scope of the suspended investigation. In fact, the Department merely adopted the petitioners' definition of the subject merchandise. Therefore, respondents' arguments that the Department positively excluded the Flash EPROM, either by neglecting to address it, or by excluding the E²PROM, are erroneous.

Respondents also argue that the exclusion of the E²PROM by the petitioner and the Commission suggests that all electrically erasable devices, including the Flash EPROM, are excluded from the scope of the suspended investigation. As demonstrated below, we determine that because of the significant dissimilarities the exist between E²PROMs and Flash EPROMs, the petitioners', Department's, and Commission's exclusion of the E²PROM is not dispositive with regard to the Flash EPROM.

The petitioners' definition of EPROMs did not include E²PROMs because E²PROMs' high prices rendered them uncompetitive with PROMs. In its 1985 application for an antidumping duty investigation, petitioners noted with regard to the E²PROM that:

> These newer devices do not compete with PROMs yet because of costs. (*Id.* at 9).

The Commission specifically noted that structural and technological differences present in the E²PROM (to which petitioners alluded) resulted in the product's high cost and consequent inability to compete with the EPROM.

> Because of their more complicated technology, E²PROMs are significantly more expensive than EPROMs. (*Id.* at 9)

Because the E²PROM's complicated technology and consequent high cost prevented it from competing with the EPROM, the Commission classified it as a separate like product.[7] Although the Department is not required to consider the Commission's classification of the E²PROM as a separate like product to be dispositive as to the outcome of this case, it is helpful to analyze why the Commission determined that the E²PROM was a separate like product, while concluding that the one time programmable EPROMs (OTP) was the same like product as EPROMs.

In the OTP case, for example, the Commission noted that although the OTP could not be erased because its plastic package obscured the chip's memory array.

> The semiconductor chip itself is identical in both standard EPROMs and OTPs. The chips are manufactured in the same plants, by the same workers, and use the same technology. Moreover, during the manufacturing and test phases, the chips can be and are erased by the manufacturer. OTPs simply represent a different packaging for the chip. It is this

[6] After the Department defines the class or kind of merchandise, the Commission determines the like product subject to their injury determination investigation. "Like product" is defined is: [T]he product which is like, or in the absence of like, most similar in characteristics and uses with the article subject to the investigation." (19 U.S.C. 1677(10)).

[7] The Commission did not conduct an injury determination for the E²PROM stating that it was not within the scope of Commerces' investigation.

difference in packaging which results in the erasability or the lack thereof in the chips. The chip maintains its essential characteristics and uses, even though its packaging renders it unerasable by end users. (Erasable Programmable Read Only Memories from Japan, ITC Publication 1927, December 1986 at 8.)

Although a packaging difference with insignificant technological importance rendered a chip unerasable in the case of the OTP, because the chip's essential use, namely, non-volatile storage of data, was not altered by the cosmetic difference, the chip was considered a like product to EPROMs.

In reference to the E²PROM, which the Commission described as a variant of the EPROM which is erased electrically rather than by exposure to UV light, the Commission notes:

Because of their *more complicated technology*, E[2]PROMs are significantly more expensive than EPROMs. Electrically erasing an E[2]PROM is much faster than erasing an EPROM by exposing it to ultraviolet light. Consequently, purchasers who foresee the need to reprogram their chips regularly or frequently are apparently willing to pay the premium. (*Id.* at 9.) (emphasis added)

The Commission continues to observe that E²PROMs are a different like product because:

[T]hey are different in *design and function* from EPROMs. While the memory characteristics are the same, we conclude that the *difference in technology* responsible for the characteristic of electrical erasability renders them different from EPROMs. (*Id.* at 9.) (emphasis added)

In the case of the E[2]PROM, the Commission determined that although the memory characteristics of the EPROMs and the E²PROM were the same (as in the case of the OTP and the EPROM), the differences in structure and technology found in the E²PROM, (which engender differences in cost and functions) outweighed the fundamental similarity from EPROMs and E²PROMs share; specifically, non-volatile storage of memory. For this reason, the Commission determined that E²PROMs were separate like products from EPROMs, and the petitioner did not suggest, nor did the Department determine that E²PROMs were within the class or kind of merchandise subject to the investigation.

It is clear that the Commission concluded that a difference in packaging that affected an ancillary function of a memory device, erasability, without changing the chips' essential use was not sufficient to deem the product a separate like product. It is also clear, however, that the Commission determined that significant structural and technological differences which affect the erasability of memory devices and also result in cost and functional differences were sufficient to deem a product a separate like product even if the chips' essential uses remain identical. We have concluded that because of the conspicuous similarities that exist between the Flash EPROM and the EPROM, and the conspicuous dissimilarities that exist between Flash EPROMs and E²PROMs, the classification of the E²PROM as a separate like product by the Commission (and its exclusion by the petitioners) is not dispositive as to whether Flash EPROMs are excluded from the scope of the suspended investigation. The record demonstrates that EPROMs and Flash EPROMs share the same essential characteristics of non-violatile memory and have the same basic structure. The characteristic of electrical erasability is provided for in the Flash EPROM without significantly altering the structure or technology of the EPROM. In addition, Flash EPROMs are replacing EPROMs in many applications above the 4MB level. Conversely, Flash E²PROMs, like E²PROMs, employ two transistor cell structure technology and possess enhanced erasure capabilities.

Since the language contained in the petition, and the determinations of the Department and the Commission are not dispositive, we looked to the remaining provisions of § 353.29, as appropriate. In this case, we have decided to analyze the Flash EPROM as a later-developed product within the meaning of 19 U.S.C. 1677j(d) because, as demonstrated below, Flash EPROMs were not developed at the time of the initial investigation. Therefore, the Department utilized the criteria of § 353.29(h) in making its determination whether the Flash EPROM is included within the scope of the suspension agreement on EPROMs from Japan.

Petitioners state that Flash EPROMs were "in the development stage at the initiation of the EPROM investigation," whereas the respondents claim that Flash memory devices existed at the time of the original antidumping investigation. (Suspended Antidumping Investigation Concerning EPROMs from Japan; Application Requesting A Scope Determination on Flash Memories Based on EPROM Technology, May 30, 1991, at 4.) Petitioners' rebuttal comments clarify the later-developed product issue by differentiating between Flash EPROMs and Flash E²PROMs. Petitioners argue that there are two types of Flash memory devices: Those based on E²PROM technology (Flash E²PROMs) and those based on EPROM technology (Flash EPROMs).

Petitioners and respondents agree that the Flash E²PROM existed in 1984. (Toshiba introduced an E²PROM-based Flash product in 1984.) Because of the Flash E²PROM's structural and functional similarities to the E²PROM, which was found to be a separate like product, petitioners do not seek to include the Flash E²PROM in the scope of the suspension agreement. Petitioners argue, however, that the Flash EPROM was not commercially available until the end of 1988. Petitioners argue that the Flash EPROM should be included in the scope of the suspension agreement on EPROMs because its structural and functional characteristics resemble those of EPROMs. The Department concludes that Flash EPROMs are later-developed products because it is clear that, although Flash technology had been incorporated into E²PROM architecture as early as 1984, Flash technology was not incorporated into EPROM architecture until 1988. Petitioners state:

[T]he Flash EPROMs perfected by Intel and first sold at the end of 1988 represent the natural evolution of basic EPROM technology. (Petitioners, August 9, 1991, *op. cit.*, at 4–5.)

Incorporation of Flash technology into EPROM architecture represented an important technological improvement of EPROM technology that affected the cost and function of the Flash EPROM and clearly differentiated the product from the Flash E²PROM. Based on the foregoing, we determine that the Flash EPROM was not developed at the time of the initial investigation. Therefore, we have applied the criteria set forth in § 253.29(h) of the regulations governing later-developed product scope determinations. The regulations provide.

(1) In general. For purposes of determining whether a product developed after an antidumping investigation is initiated (hereafter in this paragraph referred to as the "later-developed merchandise") is within the scope of an order, the Secretary will consider whether:

(i) The later-developed product has the same general physical characteristics as the merchandise with respect to which the order was originally issued (hereafter in this paragraph referred to as the "earlier merchandise");

(ii) The expectations of the ultimate purchasers of the later-developed product are the same as for the earlier merchandise;

(iii) The ultimate use of the earlier merchandise and the later-developed product are the same;

(iv) The later-developed product is sold through the same channels of trade as the earlier merchandise; and

(v) The later-developed product is advertised and displayed in a manner similar to the earlier merchandise.

With respect to later-developed products which incorporate a significant technological advance or significant alteration of an earlier product, prior to issuing a ruling to include a product within the scope of an order pursuant to § 353.29(h), the Secretary will notify the Commission in writing of the proposed inclusion in accordance with § 353.29(d)(7)(iii). See also section 781(d) of the Tariff Act of 1930, as amended, 19 U.S.C. 1677j(d) (the Act), which provides that the Department may not exclude later-developed products from an order merely because the products:

(i) Are classified under a tariff classification other than that identified in the petition or the Secretary's prior notices during the proceeding; or

(ii) Permit the purchaser to perform additional functions, unless such additional functions constitute the primary use of the products and the cost of the additional functions constitute more than a significant portion of the total cost of production of the products.

Physical Characteristics

As discussed above, both the EPROM and the Flash EPROM are based on a one transistor stacked gate cell structure. In terms of structural appearance, the two memory devices are indistinguishable. To reiterate, the choice of a one transistor cell structure has more than cosmetic significance; there are direct functional and cost ramifications of the choice of a one transistor cell structure.

First, the one transistor cell device will be less expensive than a device based on a two transistor cell structure. This is due to the fact that for a given die size the two transistor cell structure device is less dense (in terms of total memory bits stored) than the one transistor device. Certain Flash E²PROMs that are based on a two transistor cell structure contain cells that are 79% larger than cells found in certain Flash EPROMs that are based on a one transistor cell structure.[8] Selection of a two transistor cell structure has functional implications in addition to price-inflationary effects. The second transistor in the two transistor cell E²PROM or Flash E²PROM allows the user to select a particular byte or small section address to erase. Although a Flash EPROM, like Intel's 128K Flash EPROM, can erase four multiple byte-wide sections, it cannot erase thousands of individual byte sections like a similarly dense E²PROM. EPROMs are clearly not capable of conducting byte or small section erase, and Flash EPROMs are generally capable of conducting only bulk or large block erase. This is a significant functional difference between one and two transistor cell structure devices.

One of the major physical differences purported to exist between certain Flash EPROMs and EPROMs is gate oxide thickness.[9] Certain EPROMs produced by the respondents contain floating gates that are coated with 250 angstrom thick gate oxide, while certain Flash EPROMs produced by the petitioners, contain floating gates that are coated with 100 angstrom thick gate oxide.[10] However, it should be observed that petitioners' Flash EPROM and EPROM both utilize 100 angstrom gate oxide as an insulator on the floating gates of their memory cells. The Department determines that this physical difference between EPROMs and Flash EPROMs, given the other major similarities (i.e., identical cell structure) that exist between EPROMs and Flash EPROMs, does not merit the exclusion of Flash EPROMs from the scope of the suspension agreement.

Respondents allege that an EPROM's package is different from a Flash EPROM's package because of the presence of a window to allow UV exposure in the EPROM. As was stated above, the Commission determined that the OTP was within the scope of the suspension agreement, despite its packaging, which resembles that of a Flash EPROM. With regard to the OTP, the Commission determined that cosmetic packaging differences which affect the erasability of an EPROM, but do not affect the chips' essential characteristics and uses, cannot be considered sufficient grounds for the exclusion of a product from the scope of the suspension agreement. Similarly, with respect to the Flash EPROM, the fact that the Flash EPROM is enclosed in a plastic, windowless package does not affect the Flash EPROM's general characteristics which can be defined as non-volatile bulk erasable memory. Because the Flash EPROM's packaging is not responsible for the product's ability to conduct electrical erasure, and because the packaging does not impinge on the product's essential uses, this physical difference between Flash EPROMs and EPROMs is not significant enough to warrant exclusion from the scope of the suspension agreement.

In 1986, the EEC Commission initiated an antidumping investigation on EPROMs from Japan. During the course of their investigation, the EEC Commission confronted the issue of classification of the Flash EPROM.

The Commission included the Flash EPROM within the scope of their investigation. The EEC analyzed the Flash EPROM in its antidumping duty order on Japanese EPROMs. The EEC observed:

From the technical information at hand it can be concluded that Flash EPROMs, despite being electrically erasable, are built on EPROM and not on E²PROM cell structure and are assembled into EPROM/OTP packages and have the same pinout as the latter. Furthermore, flash EPROMs generally substitute for EPROMs. For these reasons a flash EPROM if it is based on EPROM technology is considered to be a like product to EPROMs. (Official Journal of the European Communities, 12.3.91, at 65/3.)

Although the Department does not consider EEC Commission decisions to be dispositive in regard to scope cases, it is important to note that the EEC utilized the same logic that we employed to conclude that the Flash EPROM is within the scope of the suspension agreement. Specifically, the EEC, like the Department, found particular Flash EPROMs, that are based on EPROM cell structure, and that are substituted for EPROMs to be within the scope of their investigation. Trade journals also appear to agree that the Flash EPROM closely resembles an EPROM. A particularly telling assessment which confirms the Department's analysis is found in Computer Design:

The most important underlying characteristic of flash memories is that they're a derivative of EPROM, not E²PROM or static RAM, technology. (Computer Design, March 1, 1989 at 30.)

Respondents make lengthy arguments about the Flash EPROM's "physical characteristic" of electrical erasability. The Department feels that electrical erasability is a product use feature, not a physical feature. Therefore, electrical erasability will be discussed in the "Ultimate Use of the Product" section.

Expectations of the Ultimate Purchasers

The Department has determined that the Flash EPROM's non-volatile memory feature represents the primary product expectation of the ultimate purchasers.

[8] *Cf.* Petitioners, August 9, 1991, op. cit., at attachment C. According to petitioners' graph, the Flash EPROM cell measures 14 um² and the Flash E²PROM cell measures 25 um². The Flash E²PROM cell is thus approximately 79% larger than the Flash E²PROM cell. The corresponding measurement for the EPROM cell is 14 um² and 30 um² for the E²PROM cell. The E²PROM cell is thus 114% larger than the EPROM cell.

[9] Another difference is the presence of overerase circuitry in the Flash EPROM. A discussion of this difference appears in the "Ultimate Use of the Product" section below.

[10] There are approximately 250,000,000 angstroms in one inch. As was mentioned above, petitioners currently utilize 100 angstrom thick gate oxide to insulate the floating gates of both their Flash EPROMs and their EPROMs based on 0.8 micron technology production.

Respondents argue that the expectations of the ultimate purchasers of Flash EPROMs are significantly different than the expectations of the ultimate purchasers of EPROMs because the erase process of Flash EPROMs is considerably faster and easier to conduct than that of EPROMs. The Department contents, however, that the speed and efficiency of Flash erase represent improvements of an ancillary function of EPROM technology, because although UV erasure of EPROMs is a long and tedious process, EPROMs are, nonetheless, erasable. The Department does not dispute the fact that the Flash EPROM can be erased significantly faster and with a lower incidence of error than other types of EPROMs. We have concluded, however, that a product that resembles an EPROM in structure and technology cannot be excluded from the scope of the suspension agreement merely because it conducts an ancillary product feature, erasure, more quickly and efficiently than a product originally subject to the scope of the suspension agreement. This reasoning was employed by the Commission in reference to the OTP.

Ultimate Use

Respondents feel that the ultimate use of the Flash EPROM is rewritable non-volatile memory. They argue that the EPROM is not rewritable because of the slowness and inefficiency of UV erasure. The Flash EPROM, respondents argue, is rewritable because of the ease, speed, and efficiency of electrical erasure. The Department admits that it is easier to rewrite a Flash EPROM than an EPROM, but as we clarified above, even if one product conducts a process faster or more efficiently than another product, if the product that is more efficient does not contain significant complicated structural or technical differences, the Department cannot exclude the product from the scope of the suspension agreement. The Department must adhere to 19 CFR 353.29(h)(ii), in which the regulations state with regard to later-developed products which incorporate a significant technological advance:

> [T]he Department may not exclude later-developed products from an order merely because the products:
>
> Permit the purchaser to perform additional functions, unless such additional functions constitute the primary use of the products and the cost of the additional functions constitute more than a significant portion of the total cost of production of the products.

A lucid interpretation of the above statement is that the Department cannot exclude the Flash EPROM from the scope of the suspension agreement merely because it performs a particular function, erasure, (which is not the primary use of the product), more quickly and efficiently than the subject merchandise. None of the parties has proven that (the cost of) incorporation of electrical erase technology into the Flash EPROM represents a significant portion of the total cost of production of the Flash EPROM.[11]

With regard to the cost of the additional anti-overerase circuitry included on Flash EPROMs to prevent overerasure, the Department feels that this is also not a significant difference between Flash EPROMs and EPROMs to warrant the exclusion of the Flash EPROM from the scope of the suspension agreement. It was never shown that the addition of anti-overerase circuitry composed a significant amount of the total cost of production of the Flash EPROM, nor do we feel that circuitry designed to address side effects of an ancillary product feature, electrical erasability, should warrant the exclusion of Flash EPROMs from the scope of the suspension agreement.

Even if the Department considered erasure by electrical means to be an additional function, the Flash EPROMs primary function remains non-volatile storage, not electrical erasability. The Department did not list erasure as a function of primary importance in the scope section of the original suspension agreement. Although erasability is mentioned, it is only mentioned in reference to the OTP case, in which the Department found that packaging differences which make a die unerasable were insufficient to exclude a product from the scope of the suspension agreement because the product retained its essential uses and characteristics. In reference to the OTP, the petitioners alleged and the Department agreed that:

> EPROMs in plastic cases are within the scope of the investigation, despite the fact that they are not erasable. Their electrical properties are identical to ceramic cased EPROM * * *.(Final Determination of Sales at Less Than Fair Value, 51 FR, October, 30, 1986 at 39691.)

One of the principal electrical properties to which the petitioners referred was the non-volatile storage of charged or uncharged floating gates. Both the Flash EPROM and the EPROM contain floating gates that are the essential storage nodes of the memory device. This is the primary technological/structural similarity between Flash EPROMs and EPROMs.

Channels of Trade

As petitioners state and respondents concede, both the Flash EPROM and the EPROM move through the same channels of trade. However, we agree with the respondents that many semiconductor products move through the same channels of trade and for this reason, we feel that the channels of trade criterion is not dispositive in this case.

Advertisement and Display

Because none of the parties requested consideration under § 353.29(h), none of the parties submitted comments addressing this criteria. Respondents included an Intel product brochure in one of their submissions, however, in which the advertisement and display of EPROMs and Flash EPROMs appear to be identical. As in the channels of trade, because many semiconductor products are advertised together, the Department has determined that the advertising and display criterion is not dispositive in this case.

Conclusion

As discussed above, the addition of bulk electrical erasability to the standard EPROM structure does not exclude later-developed Flash EPROMs from the scope of the suspension agreement on EPROMs. Later-developed Flash EPROMs still retain the primary function found in the original EPROMs subject to the suspension agreement, namely, non-volatile memory. The Flash EPROM provides storage and erasure abilities within the EPROM structure. Because the Flash EPROM, unlike the E^{2}PROM cannot erase in byte increments, its applications are limited to situations where bulk or large block erasability is sufficient. The channels of trade for Flash EPROMs, EPROMs, SRAMs, and DRAMs are identical; therefore, channels of trade are not dispositive in this scope determination. Similarly, EPROMs, Flash EPROMs, SRAMs, and DRAMs are advertised and displayed together; therefore, advertisement and display are not dispositive in this case.

Significant Technological Advance

Having determined that certain Flash EPROMs are later-developed products

[11] With regard to cost, because of their larger size, two transistor cell semiconductor products, such as Flash E^{2}PROMs or E^{2}PROMs, are considerably more expensive than one transistor call devices, such as Flash EPROMs or EPROMs, of equal density. As the Department indicated above, one of the primary reasons E^{2}PROMs were found to be separate like products by the Commission was because their size and complicated technology rendered them more expensive than EPROMs. (Petitioners, *op. cit.*, August 9, 1991 at 14, and 18–19.)

within the scope of the suspension agreement, we then considered whether the products in question represent a significant technological advance or alteration to the original product. The Flash EPROM is an EPROM equipped with Flash electrical erasability. Petitioners describe the development of gate oxide technology that permitted the incorporation of Flash electrical erasability into EPROM structure in 1988:

> [G]ate oxide thicknesses in EPROMs have been declining ever since Intel invented the EPROM. This continuous decline in gate oxide thickness is due to the improving ability to produce high integrity oxides for sufficient numbers of transistors at increasingly higher non-volatile memory densities.
>
> Being on the leading edge of this technology, Intel was well-positioned to recognize that, as EPROM gate oxide thicknesses continually decreased, they soon would approach 100A—a level of gate oxide thickness at which Fowler-Nordheim tunnelling was possible. UV EPROMs became Flash EPROMs when the oxide thickness of the first gate of the EPROM cell approached 100A in thickness, permitting quantum mechanical tunneling. This tunneling provides the mechanism for electrically erasing the floating gate of the cell * * * (Petitioners, *op. cit.*, August 9, 1991 at 6–7.)

Based on the foregoing, we determine that the Flash EPROM "incorporates a significant technological advance or significant alteration to the EPROM which is subject to the suspended investigation."

We invite interested parties to comment on this preliminary determination, and to address the above criteria within 30 days of publication of this preliminary determination. (See 19 CFR 353.29(d)(3)). Because we have preliminarily determined that certain later-developed products are within the same class or kind of merchandise as EPROMs and incorporate a significant technological advance or significant alteration of an earlier product, we have notified the Commission pursuant to section 781(e) of the Act.

This preliminary scope ruling is in accordance with section 781(d) of the Tariff Act (19 U.S.C. 1677j(d)).

Dated: December 4, 1991.

Joseph A. Spetrini,

Deputy Assistant Secretary for Import Administration.

[FR Doc. 91–29772 Filed 12–11–91; 8:45 am]

BILLING CODE 3510–DS–M

[A–588–015]

Television Receivers, Monochrome and Color, From Japan; Preliminary Results of Antidumping Duty Administrative Review

AGENCY: International Trade Administration/Import Administration, Department of Commerce.

ACTION: Notice of preliminary results of antidumping duty administrative review.

SUMMARY: In response to requests by two respondents, the Department of Commerce is conducting an administrative review of the antidumping finding on television receivers, monochrome and color, from Japan. The review covers two manufacturers/exporters of this merchandise to the United States, Citizen Watch Company, Ltd., and Victor Company of Japan, Ltd., and the period March 1, 1990 through February 28, 1991. The review indicates the existence of dumping margins for Citizen Watch Company, Ltd. during the period, and that Victor Company of Japan , Ltd. made no shipments during the period.

As a result of this review, we have preliminarily determined to assess antidumping duties equal to the differences between United States price and foreign market value.

Interested parties are invited to comment on these preliminary results.

EFFECTIVE DATE: December 12, 1991.

FOR FURTHER INFORMATION CONTACT: Karin Price or Maureen Flannery, Office of Antidumping Compliance, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue NW, Washington, DC 20230; telephone: (202) 377–2923.

SUPPLEMENTARY INFORMATION:

Background

On July 29, 1991, the Department of Commerce (the Department) published in the **Federal Register** (56 FR 34180) the final results of the previous administrative review of the antidumping finding on television receivers, monochrome and color, from Japan (36 FR 4597, March 10, 1971). On March 28, and March 29, 1991, Victor Company of Japan, Ltd. (Victor) and Citizen Watch Company, Ltd. (Citizen), respectively, requested that we conduct an administrative review, in accordance with § 353.22(a) of the Department's regulations. We published the notice of initiation of the antidumping duty administrative review on April 18, 1990 (56 FR 15856), covering the period March 1, 1990 through February 28, 1991. The Department has now conducted the review in accordance with section 751 of the Tariff Act of 1930 (the Tariff Act).

Scope of the Review

Imports covered by this review are shipments of television receiving sets, monochrome and color, from Japan. Television receiving sets include, but are not limited to, units known as projection televisions, receiver monitors, and kits (containing all parts necessary to receive a broadcast television signal and produce a video image). Not included are certain monitors not capable of receiving a broadcast signal, certain combination units, and certain subassemblies not containing the components essential for receiving a broadcast television signal and producing a video image. During the review period, television receiving sets, monochrome and color, were classifiable under Harmonized Tariff Schedule (HTS) item numbers 8528.10.80, 8528.11.60, and 8528.20.00. The HTS item numbers are provided for convenience and Customs purposes only. The written description remains dispositive.

This review covers two manufacturers/exporters of Japanese television receivers, monochrome and color, Citizen and Victor, and the period March 1, 1990 through February 28, 1991.

In response to the Department's request for U.S. sales information, Victor submitted a sales listing which recorded Victor's sales to an unrelated firm based in the United States. The merchandise covered in those sales, however, was shipped to Montreal, Canada. Part of Victor's shipments to Canada subsequently were shipped to the United States by the unrelated firm. We have been advised by Victor that the merchandise it shipped to Canada that was not subsequently entered into the United States was sold in-bond to duty-free shops or remains in Canada.

It is the Department's practice to base United States price (U.S. price) on the transaction from a producer to an unrelated reseller only if the producer knew or should have known at the time of sale that the merchandise was destined for the United States. Victor claims that it had reason to know that all or part of the merchandise it sold to the unrelated firm would eventually enter the United States. Victor proffers as the basis for its imputed knowledge (reason to know) the Department's notification to Victor, in the course of the previous administrative review, that U.S. Customs had recorded entries of Victor-manufactured television receivers into the United States, by way

of Montreal, in contradiction of Victor's certification of "no shipments."

The fact that Victor was notified that certain entries at issue in the previous review in fact entered the United States does not establish that Victor had knowledge at the time of sale of the ultimate destination of the merchandise at issue in the current review. The vast majority of the television receivers shipped to Canada are multi-signal and multi-voltage sets which are capable of functioning in countries other than the United States. The specifications of the merchandise in question, therefore, could not have given Victor reason to know the final destination of its shipments to Canada. Furthermore, the unrelated firm and Victor have both advised the Department that Victor does not have control or knowledge regarding the distribution of the sets after their arrival in Canada. For these reasons, we are not satisfied that at the time of sale Victor had actual or imputed knowledge regarding the final destination of specific shipments to Canada. We have, therefore, treated Victor in this review as a non-shipper.

United States Price

In calculating U.S. price for Citizen, the Department used purchase price (PP) or exporter's sales price (ESP), both as defined in section 772 of the Tariff Act. U.S. price was based on the packed, c.i.f. delivered price to the first unrelated purchaser in the United States.

We made deductions from both PP and ESP sales for international air or ocean freight, international insurance, U.S. and Japanese inland freight and insurance, U.S. and Japanese brokerage and handling charges, U.S. Customs duties, and discounts. We made additional deductions from ESP sales for credit expenses, royalties, advertising, warranties, commissions, re-packing expenses in the United States, inventory carrying costs, pre-sale warehousing expenses, indirect selling expenses incurred in Japan, and the U.S. subsidiary's indirect selling expenses.

We added an amount to U.S. price for PP and ESP sales to account for the Japanese consumption tax which was not collected by reason of the exportation of the merchandise to the United States, as specified in section 772(d)(1)(C) of the Tariff Act.

No other adjustments were claimed or allowed.

Foreign Market Value

In calculating foreign market value (FMV), the Department used home market price or constructed value (CV), as defined in section 773 of the Tariff Act.

During the previous review period, the Department found that Citizen had sold televisions in the home market at prices which were below the cost of production. Accordingly, for this review period, we initiated an investigation of possible sales below the cost of production. As a result of our investigation, we found below-cost sales. When more than 10 percent, but less than 90 percent, of the sales of a particular model were determined to be below the cost of production, we excluded those sales from our calculation of FMV. When 90 percent or more of the sales of a particular model were determined to be below the cost of production, we excluded all sales of that model from our calculation of FMV. If there were not sufficient contemporaneous sales of such or similar merchandise made at or above the cost of production, we used CV for calculating FMV.

Home market price was based on the packed, c.i.f. delivered price to the first unrelated party in the home market. We made adjustments to the home market price for brokerage and handling, inland freight, discounts, royalties, credit expenses, advertising, warranties, differences in the physical characteristics of the merchandise, and differences in packing. We also added an amount for the Japanese consumption tax not included in the reported selling price, and made appropriate circumstance-of-sale adjustments for consumption tax differences. When FMV was compared with ESP, we deducted indirect selling expenses and inventory carrying costs from FMV, not exceeding the amount of U.S. indirect selling expenses plus commissions paid in the U.S. market. When FMV was compared with PP, we added U.S. credit, royalties, advertising, warranties, and commissions, as appropriate. When comparisons were made to PP sales on which commissions were paid, we made an adjustment for indirect selling expenses to offset U.S. commissions.

CV includes materials, fabrication, general expenses, profit, and packing. We used: (1) Actual general selling expenses or the statutory minimum of 10 percent of materials and fabrication, whichever was greater; (2) actual profit or the statutory minimum of 8 percent of materials and fabrication costs, and general expenses, whichever was greater; and (3) packing costs for merchandise exported to the United States. Where appropriate, we made adjustments to CV, in accordance with 19 CFR 353.56, for differences in circumstances of sale. For comparisons with ESP, we made a further deduction for indirect selling expenses in the home market, not exceeding the amount of U.S. indirect selling expenses plus commissions paid in the U.S. market, in accordance with 19 CFR 353.56(b)(1).

No other adjustments were claimed or allowed.

Preliminary Results of the Review

As a result of our review, we preliminarily determine that the following margins exist:

Manufacturer/exporter	Period of review	Margin (percent)
Citizen Watch Company, Ltd.	03/01/90-02/28/91	2.44
Victor Company of Japan, Ltd	03/01/90-02/28/91	[1] 35.40

[1] No shipments during the period of review; rate is from last review in which there were shipments.

Parties to the proceeding may request disclosure within 5 days of the date of publication of this notice. Any interested party may request a hearing within 10 days of publication. Any hearing, if requested, will be held 44 days after the date of publication of this notice, or the first workday thereafter. Interested parties may submit case briefs within 30 days of the date of publication of this notice. Rebuttal briefs, limited to issues raised in the case briefs, may be filed not later than 37 days after the date of publication. The Department will publish a notice of the final results of this administrative review, which will include the results of its analysis of issues raised in any such written comments.

The Department shall determine, and the Customs Service shall assess, antidumping duties on all appropriate entries. Individual differences between U.S. price and FMV may vary from the percentages stated above. The Department will issue appraisement instructions on each exporter directly to the Customs Service.

Furthermore, the following deposit requirements will be effective upon publication of the final results of this administrative review for all shipments of television receivers, monochrome and color, from Japan entered, or withdrawn from warehouse, for consumption on or after the publication date, as provided by section 751(a)(1) of the Tariff Act: (1) The cash deposit rate for the reviewed companies will be that established in the final results of this administrative review; (2) for merchandise exported by manufacturers or exporters not covered in this review, but covered in previous reviews or the original less-than-fair-value investigation, the cash deposit rate will continue to be the company-

specific rate published in the final determination covering the most recent period; (3) if the exporter is not a firm covered in this review, previous reviews, or the original investigation, but the manufacturer is, the cash deposit rate will be that established for the manufacturer of the merchandise in the final results of this review, or if not covered in this review, the most recent review period or the original investigation; and (4) the cash deposit rate for any future entries from all other manufacturers or exporters who are not covered in this or prior administrative reviews, and who are unrelated to Citizen or Victor, or any previously-reviewed firm, will be the "All Others" rate established in the final results of this administrative review. This rate represents the highest rate for any firm in this administrative review (whose shipments to the United States were reviewed), other than those firms receiving a rate based entirely on the best information available. These deposit requirements, when imposed, shall remain in effect until publication of the final results of the next administrative review.

This administrative review and notice are in accordance with section 751(a)(1) of the Tariff Act (19 U.S.C. 1675(a)(1)) and 19 CFR 353.22.

Dated: December 3, 1991.

Alan M. Dunn,

Assistant Secretary for Import Administration.

[FR Doc. 91-29773 Filed 12-11-91; 8:45 am]

BILLING CODE 3510-DS-M

[A-533-502]

Certain Welded Carbon Steel Standard Pipes and Tubes From India, Final Results of Antidumping Duty Administrative Reviews

AGENCY: International Trade Administration, Import Administration, Department of Commerce.

ACTION: Notice of final results of antidumping duty administrative reviews.

SUMMARY: On June 10, 1991, the Department of Commerce published in the **Federal Register** the preliminary results of two administrative reviews of the antidumping duty order on certain welded carbon steel standard pipes and tubes from India. These reviews cover two exporters and two consecutive periods, from May 1, 1987 through April 30, 1989. We preliminarily found that dumping margins exist with respect to both exporters.

We gave interested parties an opportunity to comment on the preliminary results. We received comments from the petitioners and one respondent. Based on our analysis of comments received, the dumping margins have changed from the preliminary results.

EFFECTIVE DATE: December 12, 1991.

FOR FURTHER INFORMATION CONTACT: Alain Letort or Richard Weible, Office of Agreements Compliance, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue NW., Washington, DC 20230, telephone (202) 377-3793 or telefax (202) 377-1388.

SUPPLEMENTARY INFORMATION:

Background

On June 10, 1991, the Department of Commerce ("the Department") published in the **Federal Register** the preliminary results of two consecutive administrative reviews of the antidumping duty order on certain welded carbon steel standard pipes and tubes from India for the period from May 1, 1987 through April 30, 1989 (56 FR 26650). The Department has now completed these reviews in accordance with section 751 of the Tariff Act of 1930, as amended ("the Act").

Scope of the Reviews

Imports covered by these review are shipments of welded carbon steel pipes and tubes with an outside diameter of 0.375 inch or more but not over 16 inches. These products are commonly referred to in the industry as "standard pipe" and are produced to various American Society for Testing Materials ("ASTM") specifications, most notably A-53, A-120, or A-135. Until January 1, 1989, such merchandise was classifiable under item numbers 610.3231, 610.3224, 610.3241, 610.3242, 610.3243, 610.3252, 610.3254, 610.3256, 610.3258, and 610.4925 of the Tariff Schedules of the United States, Annotated ("TSUSA"). This merchandise is currently classifiable under item numbers 7306.30.1000, 7306.30.5025, 7306.30.5032, 7306.30.5040, 7306.30.5055, 7306.30.5085, and 7306.30.5090 of the Harmonized Tariff Schedule ("HTS"). As with the TSUSA numbers, the HTS numbers are provided for convenience and customs purposes. The written product description remains dispositive.

The first review covers shipments made by the Tata Iron and Steel Co. Ltd. ("TISCO") and Jindal Pipes Ltd. ("Jindal") during the period May 1, 1987 through April 30, 1988. The second review covers shipments made by TISCO alone during the period May 1, 1988 through April 30, 1989.

Analysis of Comments Received

We gave interested parties an opportunity to comment on the preliminary results of these reviews. We received timely written comments from the petitioners, the Standard Pipe Subcommittee of the Committee on Pipe and Tube Imports and its individual members, and TISCO. In addition, on July 17, 1991, we held a hearing at which interested parties presented their views orally.

Comments 1

In the preliminary results, the Department excluded from its price-to-price comparisons home-market sales of pipe and tube meeting American Society for Testing Materials A-120 specifications (hereinafter referred to "ASTM pipe") on grounds that these sales were not in the ordinary course of trade. The Department based foreign market value (hereinafter referred to as "FMV") on home-market sales of pipe produced according to Indian Standard IS-1239 specifications (hereinafter referred to as "IS pipe") rather than on home-market sales of ASTM pipe.

The respondent, TISCO, takes issue with the Department's exclusion of home-market sales of ASTM pipe. TISCO argues that none of the four reasons the Department gave in the preliminary results concluding that sales of ASTM pipe in India were outside the normal course of trade are supported in the record. TISCO also claims to have submitted evidence on the record indicating that it advertises ASTM pipe in India, and to have made available to Department officials during verification certain documents such as purchase orders to demonstrate that ASTM sales in the home market were within the ordinary course of trade.

With respect to the Department's first reason, namely that TISCO did not sell ASTM pipe in the home-market prior to the issuance of the antidumping duty order, TISCO points out that the Department used home-market sales of ASTM pipe as the basis for FMV in the original investigation.

With respect to the second reason, namely that TSCO's sale prices of ASTM pipe in India were much lower than those of IS pipe even though the cost of producing ASTM pipe is slightly higher than the cost of producing IS pipe, TISCO claims the Department has imposed a requirement that sales be made at a different level of profit in order to be considered in the ordinary course of trade.

With respect to the third reason, TISCO argues that relative volumes of home-market sales are equally irrelevant in determining whether sales were made in the ordinary course of trade. The fact that the volume of ASTM pipe sold in India was very small compared to the quantity of IS pipe sold in the same market cannot support a finding that ASTM sales in India were outside the normal course of trade.

With respect to the fourth reason, TISCO contends that the Department's inference that ASTM pipe sold in India consists of overruns or returns on export sales is mistaken. TISCO claims that the Department's inference is incorrectly based on a visual observation by Department officials, who reported that IS pipe sold in India received only minimal packing and bore the manufacturer's stamp, while the ASTM pipe sold in India was packed for export and bore no stamp, like other products destined for export. TISCO points out that it has never claimed that ASTM pipe is packed or stamped differently according to whether it is destined for home consumption or for export. TISCO explains that because it sells far more ASTM pipe in the United States than it does in India and does not know in advance which market the ASTM pipe it produces will be sold in, it used the same form of packing for both home-market and export sales of ASTM pipe in order to maximize economies of scale. TISCO further claims that none of the documentation examined by Department officials during verification showed that ASTM sales in India were cost overruns, returns, or seconds.

In response to TISCO's objections to the first and fourth reasons, petitioners assert that the dispute over the date at which TISCO started selling ASTM pipe in India is irrelevant because even the date claimed by TISCO is still consistent with the Department's conclusion that those sales were production overruns. Petitioners point out that, according to the verification report written during the original investigation, sales of ASTM pipe in India were "cost overruns" from U.S. sales. Petitioners also state that it is unclear from the evidence on the record whether TISCO specifically advertised ASTM pipe in India. Furthermore, petitioners point out the ratio of sales of ASTM to IS pipe in India has not increased appreciably since the original investigation, which is an indication that sales of ASTM pipe in India are still production overruns and are not driven by market demand.

With respect to the second point, petitioners argue that TISCO's assertion that increases in the sale prices of ASTM pipe kept pace with increases in the price of IS pipe actually undermines TICSO's claim that sales of ASTM pipe in India are within the ordinary course of trade. TISCO, petitioners contend, is thereby conceding that the significant and otherwise unexplained difference in prices between ASTM and IS pipe sold in India did not narrow over time. This implies that ASTM pipe has not yet become a product that is sold in accordance with the prevailing conditions and practices within the Indian market.

With respect to the third reason, petitioners dispute TISCO's claim that the Department does not consider a smaller number of sales in the home market as grounds to conclude that such sales are not in the ordinary course of trade. Rather, petitioners counter, the Department merely held in the results cited by TISCO that "(s)mall home-market lot sizes are not, *in and of themselves*, indicative of * * * sales outside the ordinary course of trade." (See e.g., Portable Electric Typewriters from Japan; Final Results of Antidumping Duty Administrative Review; 56 FR 14072, April 5, 1991 (emphasis added); Television Receivers, Monochrome and Color, from Japan; Final Results of Antidumping Duty Administrative Review; 56 FR 24370, May 30, 1991). In those results, petitioners claim, the Department declined to base a results of whether or not certain home-market sales were in the ordinary course of trade on the size of the market alone. Therefore, petitioners argue, those results are irrelevant in situations where the small size of the market is only one of many factors indicating that the sales are not in the ordinary course of trade.

Petitioners assert that, even assuming *arguendo* that TISCO's sales of ASTM pipe in India were *bona fide*, TISCO must demonstrate that those sales were in accordance with prevailing market conditions and practices in India in order for them to be considered to be in the ordinary course of trade. Not only do all four factors cited by the Department in its preliminary results validate its conclusion that home-market sales of ASTM pipe in India were not in the ordinary course of trade, but petitioners state three other factors in support of the Department's preliminary results.

First, evidence on the record shows that ASTM pipe is not sold in the regular channels of trade that purchase or distribute standard pipe in India. None of TISCO's end-user customers or urban distributors purchase ASTM pipe, and only two of it hundreds of rural distributors carry ASTM pipe.

Second, the record also shows that TISCO's sales of ASTM pipe in India are sporadic and that no other India manufacturer of ASTM pipe sells that product in the home market. This fact too would indicate that ASTM pipe is not sold in Indian in the ordinary course of the pipe trade.

Third, ASTM pipe is foreclosed from use in most standard pipe applications in India because it does not meet Indian building codes or government specifications. IS pipe has a distinctive thread pattern and is measured in meters. By contrast, ASTM pipe is measured in incompatible imperial measurements (inches rather than centimeters or millimeters). Thus, petitioners claim, ASTM pipe could only be used for a few limited non-conveyance purposes, such as fence tubing, for which specific standards do not exist and where there is no risk of incompatibility with existing systems. This would explain, according to petitioners, TISCO's discounting from prevailing market practices for standard pipe necessary to liquidate stocks of ASTM production overruns in the Indian market.

Petitioners argue further that the Department's conclusion that TISCO's home-market sales of ASTM pipe were not in the ordinary course of trade is consistent with case precedent, in particular the Final Determination of Sales at Less Than Fair Value; Industrial Nitrocellulose from the Federal Republic of Germany (55 FR 21058; May 22, 1990) (hereinafter referred to as "INC"). In INC, the Department determined that certain sales were not in the ordinary course of trade because the company:

> (d)id not sell the customer what it originally wanted and instead offered a substitute product, not normally sold in the home market, at the price it charges for the product originally ordered. The price to the customers reflects, in part, these conditions rather than simply the product costs and normal market forces that would otherwise have determined price.

Id. at 21059. The respondent in INC was selling a product that was more expensive to manufacture at a price comparable to that charged for the cheaper product preferred by home-market customers. Here, petitioners argue, TISCO is selling the costlier ASTM product at a lower price than the IS product that costs less to manufacture. In contrast to the situation in INC, petitioners suggest that the evidence on the record shows that ASTM pipe is not sold in the regular

channels of trade that handle standard pipe in India.

For the above reasons and the original four reasons set forth in the preliminary results, petitioners urge the Department to reaffirm its finding that sales of ASTM pipe in India are not in the ordinary course of trade.

Department's Position

Section 773(a)(1)(A) of the Act and § 353.45(a) of the Department's regulations provide that foreign market value shall be based on the price at which or similar merchandise is sold in the exporting country in the ordinary course of trade for home consumption. Section 771(15) of the Act defines "ordinary course of trade" as "the conditions and practices which, for a reasonable time prior to the exportation of the merchandise which is the subject of an investigation, have been normal in the trade under consideration with respect to merchandise of the same class or kind" (see *also* § 353.46(b) of Commerce Regulations (19 CFR 353.46(b)).

The Department, in determining whether home-market sales are in the ordinary course of trade, does not rely on one factor taken in isolation but rather considers all the circumstances particular to the sales in question. In the instant case, we relied on a number of factors, which were (a) the different standards and product uses of ASTM and IS pipe; (b) the comparative volume of sales and number of buyers of ASTM and IS pipe in the home market; (c) the price and profit differentials between ASTM and IS pipe sold in the home market; and (d) the issue of whether or not ASTM pipe sold in India consisted of production overruns. In considering these factors as a whole, we found that sales of ASTM pipe were not normal in terms of the domestic market for standard pipe in India. The relevance of each of these factors is examined in greater detail below.

We first considered the differences in standards and product uses between ASTM and IS pipe, and concluded that the physical differences between both types of pipe have a direct bearing on their ultimate use. The use of ASTM pipe in the Indian domestic market is drastically limited because this pipe is measured in inches and fractions thereof, while India had adopted the metric system as its official standard of weights and measures. As a consequence, ASTM pipe does not conform with Indian building codes or government specifications, which reduces its utility in the Indian domestic market. TISCO alleged, early in this segment of the proceeding, that Indian customers began requesting ASTM pipe in the early 1980s because it offers increased rust protection, on account of its thicker zinc coating, than IS pipe. TISCO further claimed the ASTM pipe sold in India is intended for structural, as opposed to conveyance applications, and is therefore "plain-end" pipe. Yet TISCO's own response shows that a majority of the ASTM pipe it sold in India was threaded and coupled, indicating conveyance use. In fact, TISCO stated on the record that its customers for ASTM pipe in India used the pipe for a very limited number of purposes quite different from its intended standard purposes. Based on these differences, it is apparent to the Department that any market for ASTM pipe in India can only be marginal.

We then compared the volume of ASTM and IS pipe sold in India and the number of buyers for each type of pipe, and found that the overwhelming majority of standard pipe sold in India is IS pipe, not ASTM pipe. Compared to IS pipe, ASTM pipe is sold in much smaller volumes and at a great discount. TISCO also stated that only two of its many distributors in India sell ASTM pipe for resale to the rural customers previously mentioned. While the number of sales or volume sold are not in and of themselves definitive factors in determining whether the sales in question are in the ordinary course of trade, this second factor coupled with the differences in physical characteristics and product uses of these two types of pipe supports the Department's position that ASTM pipe sales are not in the ordinary course of trade.

Although the Department has not imposed a requirement that sales be made at a different level of profit in order to be considered outside the ordinary course of trade, there is, however, a wide disparity in sale prices between ASTM and IS pipe in India, the latter being consistently sold at much higher prices than the former even though IS pipe is the country standard. This price disparity is all the more striking considering the substantially equivalent production costs of ASTM and IS pipe. Taken in conjunction with the other two factors outlined above, this price differential further indicates that ASTM pipe sales in India are outside the ordinary course of trade.

Although TISCO now denies that sales of ASTM pipe in India were production overruns or seconds, the fact remains that, in the verification report in the original investigation, TISCO officials stated that these sales were "cost overruns." TISCO has not offered, in this segment of the proceeding, any information to counter their previous admission.

While Department officials did see, during verification, purchase orders and invoices for ASTM pipe, these orders and invoices only show that two distributors purchased relatively small quantities of ASTM pipe for resale. The existence of purchase orders and invoices does not speak to the issue of whether the merchandise involved consists of production overruns because that is not the purchasers' concern. Indeed, the documents produced by TISCO point to a situation similar to those cited by TISCO as being outside the ordinary course of trade, *i.e.*, sales of samples, trial runs, damaged or obsolete goods. Moreover, TISCO did not make available to Department officials any of its standard pipe production records and tie them to specific requests by Indian distributors for ASTM pipe. This last factor, when considered along with the other three factors discussed above, leads the Department to the conclusion that the conditions and terms under which ASTM pipe is sold in India are not, and have not been, normal in the standard pipe trade in that country for quite some time prior to the exportation of ASTM pipe from India to the United States.

Based on the foregoing factors considered in their totality, the Department of reaffirms its results that sales of ASTM pipe in the domestic Indian market were outside the ordinary course of trade. While done of the foregoing factors by itself may be sufficient for the Department to reach a conclusion that ASTM sales in India were not in the ordinary course of trade, when taken a whole, as is the case here, these factors clearly support the conclusion that these sales are not in the ordinary course of trade. Therefore, we have continued to use sales of IS pipe to wholesalers and distributors as the basis for FMV in our price-to-price comparisons.

Comment 2

TISCO argues that because the Department found in the original investigation that home-market sales of ASTM pipe were in the normal course of trade, it cannot now depart from that finding. TISCO claims that it is an undisputed tenet of administrative agency law that an agency must conform itself it to its prior decisions or explain its reasons for departure. TISCO asserts that the facts of this case have not changed materially since the final results of sales at less than fair value in the original investigation.

Department's Position

The fact that the Department did not disregard ASTM sales in the original investigation as not in the ordinary course of trade does not preclude the Department from disregarding them in this review. The Court of International Trade ("CIT") has repeatedly held that a prior determination does not preclude the Department from investigating, and reaching a different conclusion on, the same issue in a subsequent portion of a proceeding, or in a separate investigation. In *PPG Industries, Inc.* v. *United States*, 712 F. Supp. 195 (Ct. Int'l Trade 1989), where the Department had determined a subsidy to be countervailable in the original investigation and reached the opposite conclusion in a subsequent administrative reviews, the CIT upheld the Department's reversal, noting that:

> Since the agencies involved perform the function of expert finders of fact concerning different programs, different time frames, economic statistics and other factors * * *, principles of issue preclusion should be carefully applied. To hold otherwise would have a chilling effect upon the administrative processes envisioned by Congress.

Id. at 199. The fact that the Department used sales of ASTM pipe in India to calculate FMV during the original investigation is irrelevant to this case. Because TISCO was not forthcoming in the original investigation with accurate information regarding ASTM sales in India, the Department never addressed this issue. As the verification report from that investigation shows, the Department was led to believe, until verification, that it would be using sales of IS pipe, which TISCO then claimed was substantially identical to ASTM pipe, to calculate FMV. During the verification in the original investigation, TISCO officials averred that they had been operating under the impression that selling ASTM pipe was illegal in India, and had therefore reported those sales to the Department as sales of IS pipe. After the misunderstanding as to the legality of ASTM sales was cleared up, TISCO then stated verification that those sales were really ASTM pipe. It was not until the instant administrative reviews that certain facts were entered into the record that raised legitimate questions as to the whether ASTM pipe sales in India were in the ordinary course of trade.

In particular, the Department found during verification that, whereas IS pipe for sale in India receives only minimal packing and is stamped with the "TATA" trademark, the ASTM pipe sold in India was packed for export and unstamped, lending credence to petitioners' allegation that sales of ASTM standard pipe in India were actually production overruns or returns on export sales. The Department has also learned additional facts regarding the different channels of trade used to market ASTM and IS pipe in India and the widely divergent pricing practices for the types of pipe in India. In light of these additional facts, the Department has ample authority to determine whether ASTM pipe sales in India were outside the ordinary course of trade.

Comment 3

TISCO disagrees with the Department's decision in the preliminary results to deny TISCO's claim for an adjustment to FMV for difference in circumstances of sale (hereinafter referred to as "COS adjustment") to account for price rebates on steel inputs received by TISCO from the Engineering Export Promotion Council ("EEPC") under the program known as International Price Reimbursement Scheme ("IPRS").

TISCO points out that petitioners unsuccessfully challenged before the CIT the Department's decision in the original investigation to make a COS adjustment for IPRS payments for the reasons it set forth in Certain Welded Carbon Steel Standard Pipe and Tube from India; Final Determination of Sales at Less Than Fair Value (51 FR 9089; March 17, 1988). Because the CIT rejected the petitioner's arguments challenging the propriety of the IPRS adjustment and endorsed the Department's decision to make the adjustment, in *Sawhill Tubular Div. Cyclops Corp.* v. *United States* (666 F. Supp. 1550, Ct. Int'l Trade 1987) (hereinafter referred to as "Sawhill"), TISCO sees no reason for the Department to depart from its position on this issue.

TISCO maintains that the reasons the Department cited in its brief submitted to the CIT in Sawhill defending its decision in the original investigation to allow a COS adjustment for IPRS payments are still valid. TISCO claims that under the fundamental principles of administrative law, an agency must conform itself to its prior decisions or explain its reasons for departing from prior decisions. TISCO contends the Department has failed to do so in this proceeding. TISCO takes issue with the Department's departure from its prior policy for three main reasons.

First, the Department erred in stating that IPRS payments were not related to sales. Not only are such payments related to sales, TISCO argues, they are in fact contingent upon export sales.

Second, TISCO disputes the Department's explanation that IPRS payments do not qualify for a COS adjustment because such payments are associated with the price of raw material inputs and are therefore related exclusively to production costs. The Department's explanation, TISCO alleges, ignores both the facts of the case and prior agency policy. TISCO argues that while the calculation of the amount of the IPRS payments depends upon the cost of raw materials, these payments are a "circumstance" that occurs only when pipe is sold in an export market. In addition, TISCO claims that numerous COS adjustments are related to differences in production costs. For example, TISCO cites § 353.57 of Commerce Regulations to support its claim that adjustments for differences in the physical characteristics of the merchandise being compared are calculated based on differences in raw material and labor costs (19 CFR 353.57). Similarly, TISCO points to § 353.55 of Commerce Regulations, stating that an adjustment for differences in quantities will be granted if such differences reflect savings specifically attributable to the production of the different quantities involved (19 CFR 353.55). Finally, TISCO argues that the § 353.56 of Commerce Regulations states that "(i)n deciding what is a reasonable allowance for any differences in circumstances of sale, the Secretary normally will consider the cost of such difference to the producer or reseller" (19 CFR 353.56). TISCO asserts that the courts have specifically ruled that the use of costs to measure the amount of a COS adjustment is permissible under the law. *Smith-Corona Group* v. *United States*, 713 F.2d 1568 (Fed. Cir. 1983); cert. denied, 465 U.S. 1022 (1984). TISCO urges the Department specifically to state its reasons for departing from these precedents if it denies the COS adjustments for IPRS.

TISCO also takes issue with the Department's statement in the preliminary results that it is improper for policy reasons to make a COS adjustment for IPRS payments because such payments are tantamount to the practice known as "input dumping." By refusing to equate the IPRS program to a duty drawback scheme on the grounds that the law allows an adjustment only for actual duties drawn back, TISCO alleges that the Department sticks to the letter of the law when it penalizes an exporter and departs from the letter of the law when it penalizes the importer. This, claims TISCO, is neither objective nor equitable.

Petitions contradict both TISCO's assertion that the Department erred in failing to explain its departure from its previous broad interpretation of the regulatory language regarding COS adjustments, and TISCO's view that the Department's decision to deny a COS adjustment for IPRS payments is contrary to the CIT's decision in Sawhill. According to petitioners, the Sawhill decision merely reaffirmed the Department's discretion to make COS adjustments for dual pricing systems. The CIT did not hold that the Department was required to make such an adjustment.

Petitioners hold that the statute and regulations both support the Department's new position on IPRS. Although the examples of COS adjustments given in the legislative history and regulations are not meant to be all-inclusive, they are all of one type. Each of the examples refers to a difference in selling expenses. Petitioners maintain that the clear intent of Congress was to allow adjustments only for expenses or services related to selling provided in one market but not provided, or provided differently, in the other market.

Petitioners assert that section 773(a)(4) of the Act provides for three specific types of adjustments for differences in cost between home-market merchandise and merchandise sold in the United States: (a) Differences in quantities; (b) other differences in circumstances of sales; and (c) differences in cost of production. Congress intended these categories to be mutually exclusive: A difference in quantity cannot be a difference in circumstances of sale, nor can a difference in circumstances of sale be a difference in the cost of production. Under the statutory construction principle of *ejusdem generis*, petitioners hold, COS adjustments should not be made for non-selling expenses.

While the Department has often interpreted these provisions broadly, it has also refused to treat non-selling expenses as circumstances of sale in a number of cases. Except in situations involving dual pricing of inputs, petitioners claim that the Department has limited itself, or has been limited by the courts, to applying the COS provision to (a) items specifically enumerated § 353.56(a) of the regulations, (b) items not otherwise addressed in the statute, and (c) distortions in FMV caused expressly by the Department's methodology.

Petitioners also support the Department's distinction between duty drawback programs and the IPRS scheme. Petitioners state that the desirability of duty drawback programs is explicitly recognized in article VI paragraph 4 of the General Agreement on Tariffs and Trade ("GATT") because such programs further the GATT's goal of facilitating and expanding international trade by at least partially nullifying the effect of restrictive import duties on input products. A drawback program allows a country's producers of finished goods to purchase from the most efficient, lowest-cost international input producers. The result is more efficient production and greater international trade than would otherwise be the case.

Petitioners claim that neither the GATT nor the Antidumping Code recognize the desirability of dual-pricing schemes because they are "drawback-like" only from the point of view of the input purchaser, who under either program is given the opportunity to buy inputs at a price comparable to the competitive world market price. The fundamental aim of dual-pricing schemes, petitioners assert, is to hamper and decrease, rather than to facilitate and increase, international trade. These schemes aim at discouraging the importation of lower-priced foreign inputs and mitigating the effects of the import barrier on industries that incorporate the input into products destined for export in competitive markets. Whereas the importation of foreign goods is an indispensable element in a duty drawback program, which presupposes the importation of foreign inputs. This is why, petitioners state, TISCO's claim that the IPRS program operates like a duty drawback scheme, for which the statute allows an upward adjustment to purchase price, is false.

Department's Position

We agree with petitioners, and have continued to disallow a COS adjustment for IPRS payments in the final results of these administrative reviews.

While we agree that an agency must conform itself to its prior decisions or explain its reasons for departing therefrom, we have fully explained our reasons for the departure. The Department has publicly announced, on several occasions, that it was re-examining its policy on dual-pricing schemes such as the IPRS and solicited comments (see, *e.g.*, Final Results of Antidumping Duty Administrative Review; Light-Walled Welded Rectangular Carbon Steel Tubing from Taiwan; 56 FR 5388, February 11, 1991). In the preliminary results of the instant reviews, the Department explained fully why it had decided to disallow the claimed adjustment for the IPRS. A memorandum explaining the Department's reasons in even more detail was placed in the public record of these administrative reviews. Furthermore, the parties to this case were put on notice that the Department was engaged in reexamination of its policy on dual pricing (see Certain Welded Carbon Steel Standard Pipes and Tubes from India; Preliminary Results of Antidumping Duty Administrative Reviews, 56 FR 26650, June 10, 1991). Finally, the Sawhill decision does not preclude the Department from changing its position with respect to the IPRS program, because that case merely held that the Department's interpretation of the COS adjustment provision was reasonable. Sawhill did not hold that another interpretation would not be reasonable.

We address, in turn, each of TISCO's three main reasons for taking issue with the Department's decision on IPRS. First, the fact that IPRS payments were contingent upon exportation of the finished product is not a sufficient basis for the Department to make a COS adjustment. Such an adjustment can only be made for a *bona fide* circumstance of sale. In Final Determinations of Sales at Less Than Fair Value; Cyanuric Acid and its Chlorinated Derivatives from Japan Used in the Swimming Pool Trade (49 FR 7424; February 29, 1984, the Department listed several examples of circumstances of sale for which adjustments are allowable, adding that "(i)n each of these examples, the seller is conveying to the purchaser something of value in addition to the physical merchandise, such as credit, warranties, or techical assistance." TISCO has not demonstrated that, by receiving IPRS payments, it is providing its customers with something of value other than the standard pipe subject to the sales transaction. The Department did not find that the price differential between sales of such or similar merchandise was "due in any way to greater direct selling expanses or to value in addition to the physical article itself being conveyed to purchasers in the higher-priced market" (*Id.* at 7427). Export rebates such as IPRS payments convey nothing to the purchaser in addition to the physical product.

Even if the IPRS were a *bona fide* circumstance of sale, the fact that the payment is contingent upon exportation does not make the payment directly related to sales. In *Negev Phosphates, Ltd.* v. *United States*,699 F. Supp. 938 (1988), the CIT upheld the Department's finding in Industrial Phosphoric Acid from Israel; Final Determination of Sales

at Less Than Fair Value (52 FR 25440; July 7, 1987) that payments received by an Israeli producer under the Exchange Risk Insurance Scheme ("EIS") were not directly related to the sales under consideration, because EIS payments did not necessarily affect the price of the exported product. The CIT recognized the Department's distinction between payments which are directly related to a sale and those which are only tied to a sale, the latter category including those payments which are merely predicated upon the act of exportation. The CIT's reasoning applies in this case as well, because the effect of the EIS scheme is the same as that of the IPRS in that the producer receives breaks from a third party on U.S. sales that it does not receive on comparable home-market sales. By changing our treatment of IPRS payments in antidumping proceedings, the Department's policy is now consistent with Industrial Phosphoric Acid and Negev.

Second, we disagree that COS adjustments should be made for differences in production costs. In Spun Acrylic Yarn from Italy; Final Results of Antidumping Duty Administrative Review (50 FR 35849; September 4, 1985), the Department noted that "adjustments for circumstances of sale are, by definition, limited to consideration of a seller's marketing practices and are unaffected by conditions affecting production." In the instant case, IPRS payments have nothing whatsoever to do with TISCO's marketing practices and are very much affected by conditions affecting production, most importantly the price of raw material inputs.

The Department concedes that its interpretation of the term "input dumping" in the notice of preliminary results is open to debate. The Department's definition of input dumping, however, was in no way material to its decision not to make a COS adjustment for the IPRS.

Rather, in reaching its decision, the Department focused, in addition to the reasons stated above, on the fact that a dual input pricing scheme such as the IPRS differs fundamentally from duty drawback, a practice which the GATT allows. As petitioners have correctly pointed out, the IPRS is equivalent to duty drawback only from the point of view of the input purchaser (in this case, TISCO), who under either program may buy inputs at prices comparable to world market prices. But whereas duty drawback, by nullifying the effect of restrictive import duties on input products, both encourages imports that might otherwise not have occurred and promotes exports, thereby benefiting international trade in two different directions, a dual input pricing program such as the IPRS mitigates the effects of import barriers on industries that would otherwise incorporate foreign-sourced inputs into products destined for export in competitive markets and discourages the importation of lower-priced inputs. TISCO's comparison of the IPRS to duty drawback is therefore completely inappropriate.

For all of the foregoing reasons, the Department has not made a COS adjustment for IPRS payments received by TISCO.

Comment 4

TISCO contests the Department's preliminary decision not to make a COS adjustment to FMV for the alleged value of the "TATA" trademark, or "trademark premium." TISCO claims that the Department has failed to subject TISCO's request to a fair and objective examination and to explain clearly why it did not make this adjustment. TISCO states that the verification outline, the verification report, and the preliminary results all either ignore TISCO's claim or dismiss it offhandedly.

TISCO also takes issue with the Department's reasons as outlined in its memorandum of July 17, 1991 (hereinafter referred to as "the memorandum"). In that memorandum, the Department cited two of its prior decisions as precedents for rejecting TISCO's claimed trademark adjustment, Lightweight Polyester Filament Fabric from Japan; Final Determination of Sales at Less Than Fair Value (49 FR 472; January 4, 1984) (hereinafter referred to as "LPFF") and Color Television Receivers from Korea; Final Determination of Sales at Less Than Fair Value (49 FR 7620; March 1, 1984) (hereinafter referred to as "Televisions"). TISCO points out that in LPFF the Department explicitly stated "(t)here is sufficient evidence of a significant effect of the trademark so as to distort the reliability of and make arbitrary any comparison * * * which ignores this fact." For this reason, the Department concluded it would be improper to include the trademarked sales in its fair-value comparisons. TISCO wonders why the Department did not follow its LPFF precedent and exclude home-market sales of IS pipe from its fair-value comparisons. In addition, TISCO points out, the Department stated in Televisions that:

> (T)o the extent there was a value of the trademark, over and above the cost of creating the trademark recognition, it is an intangible. For such an intangible, a company would have to show us how it took that intangible into account in setting its prices and how the firm quantified the value at that time before we would grant such an adjustment.

Id. at 7627. TISCO claims that the Department ignored respondent's ability to demonstrate how it took the trademark premium into account in setting its prices and how it quantified said premium at the time it set its prices in the home market. TISCO argues that it has met both of these requirements in this case, citing information provided at verification by one of its distributors and data generated by its monthly monitoring of steel market prices in India.

If the Department is unwilling either to use home-market sales of ASTM pipe in its price comparisons, or to make a COS adjustment for the Tata trademark premium, then TISCO argues that the Department should use home-market sales of IS pipe to government customers, which TISCO claims approximate the home-market price without the trademark premium since the government of India purchases pipe from all Indian producers regardless of brand or trade name.

Petitioners support the Department's preliminary decision not to make a COS adjustment for the "trademark premium." Petitioners argue that the Department was correct in denying the adjustment on policy grounds, and that TISCO failed to justify or properly quantify the adjustment.

From the policy standpoint, petitioners point to the Department's long-standing policy of denying COS adjustments based only on differences in value perceived by the purchaser. As the Department stated in a 1985 report to Congress, "(i)n practice, the Department has generally found it impractical if not impossible to make adjustments on anything but a cost basis" (see, Study of Antidumping Adjustments Methodology and Recommendations for Statutory Change, U.S. Department of Commerce, November 1985, hereinafter referred to as "the Study"). In the Study, the Department stated that "(w)hen one leaves the well-defined world of cost-based adjustments and enters the world of value-based adjustments, one abandons the factual for the hypothetical." The Department added that "(e)stimates of hypothetical prices are virtually impossible to verify in any meaningful sense. Reasonable people doing independent research can produce very different estimates. By comparison,

the verification of actual cost data required in making cost-based adjustments, although at times difficult, is a relatively straightforward procedure."

Petitioners assert that TISCO never provided evidence or argumentation suggesting that the Department's reasoning in refusing to make the claimed adjustment was in error. Rather, TISCO simply states that the law and regulations permit the Department to make value-based COS adjustments. Petitioners claim TISCO never provided an evidentiary basis to make even minimally credible value-based adjustments. TISCO is in effect arguing that the FMV of every producer subject to investigation must be the FMV of the lowest-priced home-market producer. Petitioners argue there is no support in the law for such a position.

Even if the Department were to conclude that a trademark adjustment could be warranted in certain circumstances, petitioners argue that TISCO has not followed the standard methodologies that are followed for the valuation of trademarks in, for instance, tax law, corporate law, and trust and estate law. TISCO, they claim, made no attempt to show how it took the trademark value into account in setting prices, or how it carried that value on its books as an intangible asset. Instead, petitioners allege, TISCO created its own valuation methodology based on the proposition that the value of its trademark is the difference between the price of its pipe and its own employees' hearsay reports of the pipe prices of a competitor of its choice. Petitioners claim this methodology completely lacks economic, accounting, or econometric support.

Petitioners assert that in the LPFF case previously referred to, the Department initially allowed a COS adjustment for the Silmie-5 trademark based on its understanding that the respondent produced and sold both trademarked and untrademarked *habutae* (a type of fabric) to the same class of customers in the home market. During verification, however, it become apparent that the respondent did not sell untrademarked *habutae* and, like TISCO, used as a benchmark to quantify the adjustment the prices at which a competitor sold a very similar fabric in Japan. Consequently, the Department disallowed the adjustment, noting that:

> (I)n the absence of an objective, reliable benchmark for the effect of the trademark upon the value of the merchandise, we did not feel able to make the requested adjustment.

(LPFF, 49 FR 480, January 4, 1984). Petitioners argue that the same reasoning applies here. Any price differential between TISCO and its competitors can be explained at least in part by factors unrelated to the value of the Tata trademark, such as consistency in quality, reliability in performance, efficiency in distribution, and after-sale service. Such factors, petitioners contend, are really relevant to "goodwill" for which the Department has never made a COS adjustment.

Department's Position

We agree with petitioners, and have not made a COS adjustment to FMV for TISCO's alleged "trademark premium" or "goodwill." Respondent has not provided the Department with credible information, based on generally accepted trademark valuation techniques, which would indicate what portion, if any, of the home-market price is due to the alleged trademark premium.

Because of the difficulty of objectively establishing the existence and exact amount of value-based, as opposed to cost-based, adjustments, the Department is very disinclined to make such adjustments. Even if the Department were to make such an adjustment, however, the methodology used to quantify the adjustment would have to be based upon a generally accepted method for valuing it and there would have to be ample, verifiable data establishing the size of the requested adjustment under that methodology.

Respondent has provided several citations which allegedly discuss various accounting methods for calculating goodwill or trademark premiums associated with a product. TISCO, however, has not followed any of the valuation methodologies generally accepted in corporate, tax, and estate law to determine the value of its alleged trademark premium. Instead, TISCO relied on fragmentary, selective, and self-serving estimates made by its own staff and a distributor of TISCO's own choosing as to alleged price differences between its product and a competitor's product. Even if TISCO had followed generally accepted trademark valuation procedures, however, the Department still doubts, to paraphrase its reasoning in LPFF, that price differentials are reliable as a benchmark for purposes of determining the value of a trademark, since any number of factors could explain why one manufacturer's prices for standard pipe are different from those of another manufacturer. As in LPFF, the absence of an objective, reliable benchmark for the effect of the trademark upon the value of the merchandise precludes us from making the requested adjustment.

In sum, TISCO has provided some information showing that the prices it charges for pipe and tube are higher than the prices charged by its competitors for comparable products. There are any number of factors that affect the price charged for a product, such as the relationship between buyer and seller, service, location, *etc.* TISCO has not provided sufficient evidence nor has it proved what portion of the differential between their home-market prices and their competitors' prices is attributable to the trademark premium, let alone quantified any such premium precisely. Section 353.56 of Commerce Regulations state that the Secretary will make a COS adjustment if "(t)he Secretary is satisfied that the amount of any price differential (between United States price and FMV) is wholly or partially due to such differences." In TISCO's case, the regulatory requirement has not been met.

Comment 5

TISCO argues the Department acted improperly in failing to deduct movement charges for inland freight from both purchase price and foreign market value and to explain its reasons for not making such a deduction.

With respect to its home—market freight costs, TISCO claims the Department should accept TISCO's full calculation of freight costs, which includes both pre-and post-sale freight costs, in connection with its ex-warehouse sales to wholesalers and distributors. Prior to verification, in response to an argument advanced by petitioners, TISCO asserts it submitted an alternative calculation of freight costs for those sales in the event the Department was unwilling to include pre-sale freight costs in the movement charges, and that this alternative calculation was verified. By submitting this alternative calculation, TISCO claims it was simply acknowledging the existence of a legal debate on this issue and should not be penalized for submitting this alternative calculation.

Petitioners respond that the Department was correct in not deducting foreign inland freight since, by TISCO's own admission, the inland freight figures the respondent submitted prior to verification were incorrect and the revised inland freight figures were included in the post-verification responses of January 15, 1991, which the Department rejected as being untimely.

Department's Position

We agree with respondent. In recent cases the Department has deducted both pre- and post-sale inland freight charges from United States price (hereinafter referred to as "USP") and FMV. Therefore, we have used TISCO's original inland freight figures for purposes of these final results.

In the Final Determination of Sales at Less Than Fair Value; Gray Portland Cement and Clinker from Mexico, the Department departed from its prior practice and deducted pre-sale inland freight from USP in order to ensure an "apples-to-apples" comparison (55 FR 29244; July 18, 1990). Because this ex-factory approach results in much fairer comparisons at comparable points in the chain of commerce, the Department has continued to follow the new approach in later administrative decisions (see, e.g., Television Receivers, Monochrome and Color, from Japan; Final Results of Antidumping Duty Administrative Reviews; 55 FR 35916, September 4, 1990 (treating inland freight as a movement expense and deducting from both United States price and FMV to ensure an "apples-to-apples" comparison); Red Raspberries from Canada; Final Results and Termination in Part of Antidumping Duty Administrative Reviews; 56 FR 677, January 8, 1991 (finding that a fair price-to-price comparison requires that FMV, like USP, be based on an ex-factory price); Tapered Roller Bearings, Four Inches or Less in Outside Diameter, and Certain Components Thereof, from Japan; Final Results of Antidumping Duty Administrative Review; 56 FR 26054, June 6, 1991 (stating that the Department does not distinguish between pre-sale and post-sale movement charges when calculating an ex-factory price in order to ensure an "apples-to-apples" comparison)).

Therefore, the issue of whether TISCO's alternate inland freight calculation, which it submitted at verification, is acceptable need not be addressed.

Comment 6

TISCO argues that the Department's return of its post-verification questionnaire responses and use of its pre-verification questionnaire responses as best information otherwise available ("BIA") pursuant to section 776(c) of the Act is unjustified.

TISCO disagrees with the Department's view that the quantity of unreported U.S. sales transactions was substantial. In fact, TISCO contends, such omissions were minimal (1.4 percent of total U.S. sales in the 1987–1988 review period and 1.7 percent in the 1988–1989 review period). TISCO also claims it notified the Department of these omitted sales prior to the verification.

In addition, TISCO claims that the Department routinely accepts revisions to sales listings prior to, during, and after verification. Respondent quotes the Department's own regulations stating that "(t)he Department often permits a respondent to correct a deficiency during the verification process, depending on the nature and scope of the deficiency." (See Department of Commerce; International Trade Administration; 19 CFR Part 353; Antidumping Duties; Final Rule; 54 FR 12742; March 28, 1989; Department's Position to Comment on § 353.37 at 12766). TISCO points out that in Color Television Receivers, Except Video Monitors, from Taiwan; Final Results of Antidumping Duty Administrative Review (56 FR 31378; July 10, 1991), the Department allowed a respondent, during and after verification, to revise its response in almost every respect, and resubmit revised sales listings with large quantities of sales that were omitted in the company's pre-verification submissions. According to TISCO, the Department's acceptance of revisions during and after verification depends on whether:

- The Department is able to examine and verify the revisions;
- The revisions were submitted prior to the Department's preliminary results;
- The revisions evince an effort by the respondent to conceal information that has an adverse effect on the Department's margin calculations;
- The respondent notified the Department of the omissions prior to verification, instead of the Department discovering the omissions during the verification;
- The revisions were so numerous that they prevented the Department from conducting the verification; and
- The respondent is able to explain how the revisions relate to the originally submitted data.

TISCO contends that (a) the Department was able to examine and verify the revisions to its responses, (b) the revisions were submitted prior to the preliminary results, (c) the revised information has no effect on the margin calculations, (d) TISCO discovered the omissions during verification, (e) the revisions did not prevent verification, and (f) the revisions were entirely related to the information originally submitted. TISCO argues that the Department's memorandum explaining the reasons for returning TISCO's post-verification submissions was both incomplete and unfair.

Petitioners respond that the Department's decision to reject TISCO's post-verification submissions is correct when viewed in the context of the entire administrative record. Petitioners argue that, from the beginning of these administrative reviews, TISCO has deliberately impeded the Department's ability to carry out the proceedings expeditiously and fairly. Although TISCO was informed in the original questionnaire to report all sales of the merchandise under consideration, and warned not to make a results as to which sales to report without consulting the Department, TISCO initially reported home-market sales of ASTM pipe only. After the Department asked TISCO, in a supplemental questionnaire, to provide a list of all home-market sales of such or similar merchandise, and repeated its warning to respondent not to make a decision as to which sales were "such" and which sales were "similar" without consulting the Department, TISCO's revised response provided only home-market sales of IS pipe to Indian government agencies, which constitute but a tiny fraction of TISCO's home-market sales of IS pipe and are made at below-market prices set by the government of India itself. At that point, which was well over a year and a half after the initiation of the 1987–1988 administrative review, petitioners argue that the Department would have been justified in issuing preliminary results based on petitioner's BIA. Instead, in response to a request by TISCO, the Department gave TISCO another chance to provide a full and complete set of responses. TISCO provided what it claimed were full and complete responses in June 1990 (for the 1987–1988 review) and July 1990 (for the 1988–1989 review). The Department sent supplemental questionnaires in October 1990 outlining the shortcomings of those submissions, to which TISCO replied later in that month. TISCO amended its 1987–1988 responses once more in November 1990, when it provided additional information on certain home-market sales. Finally, on December 7, 1990, TISCO notified the Department that additional U.S. sales had been discovered, a complete list of which was not provided to the Department until the arrival in Calcutta of the verifying officials on December 12, 1990. These data included substantial amounts of newly discovered U.S. sales and the re-characterization of home-market sales of IS pipe. During the verification, petitioners point out, the Department discovered there were yet more

unreported home-market sales of similar merchandise, due to the fact that TISCO, once again making a decision on its own as to what constituted such or similar merchandise, had omitted to report sales of electric-resistance welded ("ERW") pipe, which is within the scope of the antidumping duty order.

Petitioners argue that this situation is remarkably similar to that described in Final Determination of Sales at Less than Fair Value; Light-Walled Welded Rectangular Carbon Steel Tubing from Argentina (54 FR 13913; April 6, 1989), where the respondent submitted a revised response supplementing and correcting earlier submissions less than a week before verification. During the verification, as in the instant case, the Department discovered additional unreported sales that had occurred because the respondent had made its own results as to which sales ought to be reported. The new information was verified, but, as in the instant case, only after the verifying officers had warned the respondent that the Department might not accept such a massive revision. Subsequent to the verification, the Department rejected another revised response incorporating all the changes found prior to and during the verification. In its final results, the Department, in accordance with section 776(c) of the Act, used the best information otherwise available, and noted that:

> The untimely submission of key information only days before, during, and after the verification precluded the Department from conducting a reasonable and thorough analysis of this information prior to the verification, just as petitioners were unable to comment on the new responses. Because the recalculations and revisions carried out at verification substantially exceeded any methodological problems and mathematical errors that are commonly found, the Department cannot properly base its determination on the information submitted during and after verification by the respondent. It is the responsibility of respondents to provide an accurate and complete response prior to the preliminary determination and verification so that the Department may fully analyze the response and other parties may comment on it. The purpose of verification is to establish the accuracy of a response rather than to reconstruct the information to fit the requirements of the Department.

Id. At 13915. Petitioners argue that TISCO's habit of disclosing information ever more detrimental to itself in bits and pieces over an extended period of time "reveals a consistent pattern of unresponsive, insufficient, and untimely submissions to repeated attempts by Commerce to elicit information pertinent to the underlying reviews" (see *Ansaldo Componenti S.p.A.* v. *United States*, 628 F. Supp. 198, Ct. Int'l Trade 1986). Petitioners argue that TISCO has offered no compelling reason why the Department should deviate from its practice and accept TISCO's post-verification responses.

Department's Position

We agree with petitioners that our decision to reject TISCO's post-verification responses was consistent with the Department's past practice and in accordance with our regulations. Given the extremely long span of time and the multiple opportunities that TISCO was afforded to provide the Department with complete and accurate responses, the Department had every right to expect, at verification, that TISCO's books and records would corroborate those responses. Such was not the case. Instead, the verifying officials were presented with substantial amounts of new information that they had not time to evaluate and analyze. The verification report shows that the quantity (in tons) of TISCO's unreported sales which were discovered at verification accounted for a much higher percentage of TISCO's sales (measured in tonnage) than TISCO has stated in its briefs. TISCO in fact has not specified how it calculated the very low percentages of unreported sales it has advanced in its briefs. Therefore, we have continued to base the final results of the instant reviews on information TISCO submitted prior to verification, for U.S. sales reported in a timely fashion, and on petitioners' BIA for the unreported U.S. sales.

Comment 7

In the event that the Department persists in using BIA as a surrogate for the unreported U.S. sales, the Department should not rely on petitioner's methodology, which TISCO describes as "crude." Rather, the Department should use the weighted-average dumping margin calculated for the balance of TISCO's U.S. sales as a surrogate for TISCO's unreported U.S. sales. If the Department insists on using TISCO's company-wide statistics to calculate USP, it must refine petitioner's calculations in several important respects.

First, rather than using unverified volume and value of sales figures from TISCO's annual reports, TISCO argues the Department should use the figures reported in TISCO's submission. Second, TISCO points out that the Department's BIA calculations do not take into account rebates, discounts, and commissions paid in the home market. TISCO claims that its annual reports provide this information under the heading of "operating expenses," which should be deducted from annual turnover. Third, the Department's BIA calculations do not reflect freight charges, which can vary substantially between the home and export markets. TISCO requests that the Department reduce USP by the per-unit freight charges in rupees it reported it its submission. Likewise, TISCO requests the Department make an adjustment to the USP used in its BIA calculation for differences in packing charges between the two markets. Fourth, TISCO alleges that the Department's BIA estimate penalizes it twice for the IPRS payments received in connection with its export sales since it does not reduce total home-market revenues by the amount of these payments and fails to add a per-ton adjustment for IPRS payments to USP. Finally, the Department must increase USP for various indirect tax and import duty exemptions or rebates TISCO received by reason of the exportation of the merchandise.

Petitioners respond that, if the Department were to modify its BIA calculations as suggested by TISCO, it would simply restore the *status quo ante* November 1990, before the untimely revisions were submitted. This choice, petitioners claim, would only make the Department's job harder in future proceedings by encouraging the "dilatory" tactics employed by TISCO in these reviews.

Department's Position

We agree with petitioners. By requesting that the Department use TISCO's reported figures for a series of adjustments and movement charges, TISCO is really arguing that the Department not resort to BIA at all. Honoring such a request would defeat the intent of Congress when it inserted the BIA clause into the Trade Agreements Act of 1979, which became section 776(c) of the Act. Therefore, for purposes of these final results, we have continued to apply petitioners' BIA to the unreported U.S. sales.

Comment 8

TISCO objects to the Department's decision to expunge from the record of these proceedings certain verification exhibits submitted as attachments to TISCO's earlier letter of January 15, 1991. These exhibits pertained to TISCO's home-market sales of ASTM pipe and to its claimed trademark adjustment. TISCO claims that these exhibits would have shown that ASTM pipe was advertised in India and that a

COS adjustment was warranted for TISCO's alleged trademark premium.

Department's Position

Neither the Act nor the Department's regulations in any way oblige the Department to enter verification exhibits into the record of a proceeding. Indeed, the Act and the regulations are totally silent with respect to verification exhibits. The practice of collecting verification exhibits evolved for the administrative convenience of case analysis writing verification reports at a considerable distance of both time and space from the verification. Verifying officials have discretion as to whether or not to bring back verification exhibits, and as to which exhibits they do bring back out of the hundreds, if not thousands, of pages of documents that are typically examined during a verification. In this case, the verifying officials exercised proper discretion in not bringing back exhibits which had either already been submitted on the record (in the case of advertising) or were inconclusive. The verification report describes in great detail the two methodologies TISCO used in calculating the alleged trademark premium.

Comment 9

Petitioners concur with the Department's preliminary decision to allow an adjustment claimed by TISCO for differences in the physical characteristics of the merchandise ("diffmer") based on the costs of galvanizing, threading, and coupling IS pipe (hereinafter referred to as "the first diffmer"), and to disallow the diffmer claimed by TISCO between ASTM and IS pipe (hereinafter referred to as "the second diffmer").

Petitioners criticize the methodology used by TISCO to calculate the second diffmer because it takes into account only two dimensions—length and circumference of the pipe—and ignores the third dimension, which is the thickness of the zinc coating applied to galvanized pipe. Because ASTM specifications call for a thicker zinc coating than do the IS specifications, petitioners assert that galvanizing ASTM pipe consumes more zinc per ton of pipe than galvanizing IS pipe. Petitioners cite the verification report, which stated that "(i)f the calculation of differences in cost of production were to be based on actual consumption of zinc, it would result in an upward adjustment to foreign market value, rather than a downward one as claimed by TISCO."

Given the evidence on the record, petitioners suggest that the Department use the best information otherwise available to calculate the actual differences in zinc usage between ASTM and IS pipe, offsetting the documented differences in coil costs and labor costs, and adding the extra galvanizing cost to the home-market price.

TISCO replies that petitioners' suggestion is inappropriate, since the Department has already rejected the entire adjustment because of a disagreement on the methodology used in calculating galvanization costs. Because this is not a situation where the respondent was uncooperative or falsified information, TISCO argues that the use of BIA more adverse than that used in the preliminary results is unwarranted in this case.

Department's Position

We agree with respondent. As petitioners have stated, the second diffmer claimed by TISCO for differences between galvanized ASTM and IS pipe was based on the surface area coated with zinc. In the verification report, the Department noted that TISCO's calculation of the second diffmer failed to take into account the thickness of the coating. The Department did not prescribe the methodology that TISCO should use in its diffmer calculation, but rather merely noted the omission in TISCO's calculation. Because the Department rejected the second diffmer in full on account of this methodological flaw, we see no need to recalculate that diffmer based on any methodology different from that proposed by TISCO.

Comment 10

Petitioners argue that the Department erred in not making a COS adjustment for credit expenses, since the record shows that TISCO submitted information on credit expenses incurred on sales to the United States and claimed it incurred no such expenses on home-market sales to distributors.

Department's Position

We agree with petitioners, and have corrected this ministerial error in calculating the final results of these reviews.

Comment 11

Petitioners understand that in March 1991, the Department changed its previous practice of calculating one "all other" cash deposit rate for exporters that were shipping at the time of the original investigation and to calculate another rate for new shippers based on the weighted average of the rates for all respondents in the most recent segment of a proceeding. TISCO also understands that the Department's new policy is to apply only one rate to "all other" shippers, that rate being equal to the highest rate calculated for any individual shipper in the most recently completed segment of a proceeding.

Petitioners claim that the retroactive application to ongoing administrative reviews of this new policy is improper, since it materially affects the rights of parties without their knowledge and without their having had an opportunity to comment on this change.

If the Department is to apply this policy in the final results of this review, petitioners request that the Department should base the "all other" cash deposit rate on TISCO's rate, since TISCO is the only company subject to the 1988–1989 review, which is the most recently completed segment of this proceeding. Petitioners argue that the fact that TISCO's rate may be based partly on BIA is irrelevant, since the Department has long included in its "all other" calculations the margins determined for companies based on BIA, a policy sanctioned by the CIT in *Serampore Industries Pvt. Ltd.* v. *United States*, 696 F. Supp. 665 (Ct. Int'l Trade 1988).

Department's Position

We disagree with petitioners that the Department's recent change in practice concerning the calculation of "all other" and "new shippers" rates in administrative reviews in any way denied interested parties the opportunity to comment on this change in practice.

There is no reference in the statute or regulations concerning the method of calculating an "all other" or "new shippers" rate. This practice had simply evolved through the publication of notices. We provided an opportunity for interested parties to comment on this change in practice through the normal comment procedure following the publication of the notice of preliminary results.

Prior to March 8, 1991, the Department's practice in administrative reviews was to assign a "new shippers" rate for deposit of estimated antidumping duties by those firms who begin to export to the United States after the last day of the period reviewed, based on the highest duty deposit rate calculated (*i.e.*, not based on best information otherwise available, or "BIA") for any respondent in the most recent segment of a proceeding. The U.S. Customs Service informed the Department that it did not have the means to determine when a given exporter's first shipment occurred. Therefore, the previous practice could

not be implemented and the Department needed to change it. Our new practice is to assign one rate to all exporters not having an individual rate. This rate is equal to the highest rate for any firm in the administrative review other than those receiving a rate based entirely on BIA. For administrative reasons, the Department does not have the option of reverting to the previous practice of assigning a separate "new shippers" rate.

In line with this policy, since TISCO's rate is only partially, rather than entirely, based on BIA and the 1988–1989 review is the most recently completed segment of this proceeding, the cash deposit rate applicable to all unrelated manufacturers or exporters not covered in the antidumping duty order or in these administrative reviews shall be TISCO's rate in the 1988–1989 review.

Final Results of the Reviews

After analysis of the comments received, we determine that the following dumping margins exist:

Period of review	Margin (percent)
05/01/87–04/30/88:	
Tata Iron & Steel Co., Ltd. ("TISCO")	77.32
Jindal Pipes Ltd. ("Jindal")	77.32
05/01/88–04/30/89:	
Tata Iron & Steel Co., Ltd. ("TISCO")	87.39

The Department shall determine, and the United States Customs Service shall assess, antidumping duties on all appropriate entries. Individual differences between United States price and foreign market value may vary from the percentage stated above. The Department shall issue appraisement instructions directly to the Customs Service.

The following deposit requirements shall be in effect for all shipments of the subject merchandise from India that are entered, or withdrawn from warehouse, for consumption, on or after the date of publication of this notice, as provided by section 751(a)(1) of the Act: (1) The cash deposit rate will be 77.32 percent *ad valorem* for Jindal and 87.39 percent *ad valorem* for TISCO, based on the final results of the most recent review in which each firm received a company-specific rate; (2) for merchandise exported by manufacturers or exporters not covered in these reviews but covered in the antidumpting duty order, the cash deposit rate shall continue to be the company-specific rate published in the antidumping duty order; (3) if the exporter is not a firm covered in these reviews or the original investigation, but the manufacturer is, the cash deposit rate shall be that established for the manufacturer of the merchandise in the final results of these reviews, or, if not covered in these reviews, the rate published in the antidumping duty order; (4) the cash deposit rate applicable to all unrelated manufacturers or exporters not covered either in the antidumpting duty order or in these administrative reviews shall be 87.39 percent *ad valorem*, based on the results of the most recently completed segment of this proceeding (1988–1989).

These deposit requirements shall remain in effect until publication of the final results of the next administrative review.

These administrative reviews and notice are in accordance with section 751(a)(1) of the Tariff Act (19 U.S.C. 1675(a)(1)) and § 353.22 of the Commerce Department's regulations (19 CFR 353.22).

Dated: December 4, 1991.

Alan M. Dunn,

Assistant Secretary for Import Administration.

[FR Doc. 91–29774 Filed 12–11–91; 8:45 am]

BILLING CODE 3510–DS–M

[C–201–405]

Certain Textile Mill Products From Mexico; Preliminary Results of Countervailing Duty Administrative Review

AGENCY: International Trade Administration/Import Administration, Department of Commerce.

ACTION: Notice of preliminary results of countervailing duty administrative review.

SUMMARY: The Department of Commerce has conducted an administrative review of the countervailing duty order on certain textile mill products from Mexico. We preliminarily determine the net subsidy to be 0.09 percent *ad valorem* for all firms for the period January 1, 1990 through December 31, 1990. In accordance with 19 CFR 355.7, any rate less than 0.5 percent *ad valorem* is *de minimis*. We invite interested parties to comment on these preliminary results.

EFFECTIVE DATE: December 12, 1991.

FOR FURTHER INFORMATION CONTACT: Dana Mermelstein or Maria MacKay, Office of Countervailing Compliance, International Trade Administration, U.S. Department of Commerce, Washington, DC 20230; telephone: (202) 377–2786.

SUPPLEMENTARY INFORMATION:

Background

On March 8, 1991, the Department of Commerce (the Department) published a notice of "Opportunity to Request Administrative Review" (56 FR 9937) for the countervailing duty order on certain textile mill products from Mexico. We received requests for review from the Government of Mexico and Tapetes Luxor, S.A. de C.V., a respondent company. We initiated the review, covering the period January 1, 1990 through December 31, 1990, on April 18, 1991 (56 FR 15856). The Department has now conducted this review in accordance with section 751 of the Tariff Act of 1930, as amended (the Act). The final results of the last administrative review of this order were published in the **Federal Register** on October 9, 1991 (56 FR 50858).

Scope of Review

Imports covered by this review are certain textile mill products from Mexico. During the review period, such merchandise was classifiable under the Harmonized Tariff Schedule (HTS) item numbers listed in the Appendix to this notice. The review covers the period of January 1, 1990 through December 31, 1990, 42 companies, and ten programs.

Analysis of Programs

(1) FOMEX

Until it was eliminated by decree on December 30, 1989, the Fund for the Promotion of Exports of Mexican Manufactured Products (FOMEX) was a trust of the Mexican Treasury Department, with the National Bank of Foreign Trade acting as trustee for the program. In this capacity, the National Bank of Foreign Trade, through other financial institutions, made FOMEX loans available, both in U.S. dollars and Mexican pesos, at preferential rates to Mexican manufacturers and exporters for pre-export and export financing. We consider the benefit from preferential loans to occur at the time the interest is paid. On FOMEX pre-export loans, interest is payable at maturity; on FOMEX export loans, interest is pre-paid. Although the Government of Mexico eliminated this program prior to this review period, there were outstanding FOMEX pre-export loans that matured during the review period.

We determine the benefit to be the difference between the interest that the companies would have paid on these loans at the benchmark interest rate and the interest that they actually paid. The dollar-denominated FOMEX pre-export loans that matured during the review period were obtained between

November 1989 and December 1989, at annual interest rates ranging from 9.8 percent to 10.6 percent. To determine the effective interest rate benchmark for dollar-denominated FOMEX pre-export loans granted in U.S. dollars in 1989, we used the average of the quarterly weighted-average effective interest rates published in the Federal Reserve Bulletin, which resulted in an annual average benchmark of 11.99 percent.

Peso-denominated FOMEX pre-export loans under review were granted at annual interest rates ranging from 37.8 percent to 41.5 percent. As the basis for our benchmark for these loans, we have relied in part on the effective rates for the years 1981 through 1984, as published monthly in the Banco de Mexico's *Indicadores Economicos y Moneda* (I.E.), because the Banco de Mexico stopped publishing data on nominal and effective commercial lending rates in Mexico after 1984. We calculated the average difference between the I.E. effective interest rates and the Costo Porcentual Promedio (CPP) rates, the average cost of short-term funds to banks, for the years 1981 through 1984. We added this average difference to the 1990 average annual CPP rates. For peso-denominated loans on which interest was due during 1990, we calculated an annual benchmark of 66.87 percent.

We found that the annual interest rate that financial institutions charged borrowers for FOMEX pre-export loans outstanding during the review period were lower than commercial rates. We therefore consider pre-export loans granted under the FOMEX program to confer countervailable subsidies to the extent that they were granted only to exporters and that the amount of interest paid on FOMEX loans is less than would be paid on comparable commercially-obtained financing.

Several exporters of the subject merchandise had FOMEX pre-export loans on which interest was paid during the review period. Because we found that the exporters were able to tie their FOMEX loans to exports of subject merchandise to specific countries, we measured the benefit only from FOMEX loans tied to shipments of certain textile mill products to the United States. For each company, we divided the FOMEX benefit received by the value of its total exports of the subject merchandise to the United States during the review period. We then weight-averaged the resulting benefits by each firm's proportion of exports of the subject merchandise to the United States during the review period. On this basis, we preliminarily determine the benefit from FOMEX pre-export loans to be 0.01 percent *ad valorem*.

(2) BANCOMEXT Financing for Exporters

Effective January 1, 1990, the Mexican Treasury Department eliminated the FOMEX loan program and transferred the FOMEX trust to the Banco Nacional de Comercio Exterior, S.N.C. (BANCOMEXT). BANCOMEXT offers short-term financing to producers or trading companies engaged in export activities; any company generating foreign currency through exports is eligible for financing under this program. The BANCOMEXT program operates much like its predecessor, FOMEX. BANCOMEXT provides two types of financing, both in U.S. dollars, to exporters: working capital loans (pre-export loans), and loans for export sales (export loans). In addition, BANCOMEXT may provide financing to foreign buyers of Mexican goods and services. Since the availability of this loan program is restricted to exporters, we consider it countervailable to the extent that the interest rates are preferential. We found that the annual interest rate that BANCOMEXT charged to borrowers for loans on which interest payments were due during the review period were lower than commercial rates. The BANCOMEXT loans under review were granted at annual interest rates ranging from 9.3 percent to 10.5 percent. Since these loans are denominated in dollars, we used a dollar-based benchmark. To determine the effective interest rate benchmark for BANCOMEXT pre-export and export loans granted in 1990, we used the average of the quarterly weighted-average effective interest rates published in the Federal Reserve Bulletin, which resulted in an annual average benchmark of 10.88 percent in 1990. Based on this benchmark, we find that the interest rate on these BANCOMEXT loans is preferential and, as such, these loans are countervailable.

We consider the benefits from preferential loans to occur at the time the interest is paid. Because interest on BANCOMEXT pre-export loans is paid at maturity, we calculated benefits based on loans that matured during the review period; these were obtained between January and October, 1990. Interest on BANCOMEXT export loans is paid in advance; we therefore calculated benefits based on BANCOMEXT loans received during the review period.

Several exporters of certain textile mill products used BANCOMEXT pre-export and export sales financing. Because we found that the exporters were able to tie their BANCOMEXT loans to specific sales, we measured the benefit only from the BANCOMEXT loans tied to sales of the subject merchandise to the United States. To determine the benefit for each exporter, we calculated the difference between the interest rate charged to exporters for these loans and the benchmark interest rate, and multiplied this interest differential by the outstanding principal. We then divided each company's BANCOMEXT benefit by the value of the company's total exports of subject merchandise to the United States during the review period and then weight-averaged the resulting benefits by the company's proportion of total exports to the United States. On this basis, we preliminarily determine the benefit from this program to be 0.005 percent *ad valorem*.

(3) FONEI

The Fund for Industrial Development (FONEI), administered by the Banco de Mexico, is a specialized development fund that provides long-term financing at below-market rates. FONEI loans are available under various provisions having different eligibility requirements. The overall objectives of the FONEI program are to promote the efficient production of goods capable of competing in the international market and to meet the objectives of the National Development Plan (NDP). We consider FONEI loans to confer subsidies because they provide loans on terms inconsistent with commercial considerations, and because the availability of these loans is restricted to enterprises located outside Zone IIIA (Mexico City and designated areas around Mexico City).

Two firms had FONEI loans outstanding during the review period. Because these peso-denominated loans had variable rates, we treated them as a series of short-term loans, as we have done previously in Preliminary Results of Countervailing Duty Administrative Review (56 FR 37081; August 2, 1991). To calculate the benefit from these loans, we used the same benchmark as for the peso-denominated FOMEX pre-export loans. We compared this benchmark with the interest rate in effect for each FONEI loan payment made during the review period and multiplied the difference by the outstanding loan principal. For each company, we divided the benefits by the company's total sales to all markets during the review period. We then weight-averaged the resulting benefit by each company's proportion of exports of subject merchandise to the United States during the review period.

On this basis, we preliminarily determine the benefit from this program to be 0.002 percent *ad valorem.*

(4) FOGAIN

The Guarantee and Development Fund for Medium and Small Industries (FOGAIN) is a program that provides long-term loans to small- and medium-sized companies in Mexico. Although FOGAIN loans are available to all small- and medium-sized companies in Mexico, the interest rates available under the program vary depending upon whether a company has been granted priority status, and whether a company is located in a zone targeted for industrial growth. As a result, some companies' loans are granted at lower interest rates than others. Therefore to the extent that this program provides financing at rates below the lowest non-specific rate available under FOGAIN, we consider it countervailable. See, e.g., Final Affirmative Countervailing Duty Determination and Countervailing Duty Order; Certain Textile Mill Products from Mexico (50 FR 10824; March 18, 1985).

During the review period, three companies had long-term variable-rate FOGAIN loans on which interest payments were due. Because the annual interest rate varied monthly, we treated each loan as a series of short-term loans.

To calculate the benefit, we used as our benchmark the lowest non-specific interest rate in effect for each FOGAIN loan payment and compared it to the FOGAIN preferential rate for the loan payments made during the review period. For each company, we divided the benefit from the loans by the company's total sales to all markets and then weight-averaged the resulting benefit by the company's proportion of total exports of subject merchandise to the United States during the review period. On this basis, we preliminarily determine the benefit from this program to be 0.002 percent *ad valorem.*

(5) PITEX

The Program for Temporary Importation of Products used in the Production of Exports (PITEX) was established by a decree published in the Diario Oficial on May 9, 1985, and amended in the Diario Oficial on September 19, 1986, and May 3, 1990. The program is jointly administered by the Ministry of Commerce and Industrial Development (SECOFI) and the Customs Administration. Under PITEX, exporters with a proven export record may receive authorization to temporarily import products to be used in the production of exports for up to five years without having to pay the import duties normally imposed on those imports. PITEX allows for the exemption of import duties for the following categories of merchandise used in export production: Raw materials, packing materials, fuels and lubricants, machinery used to manufacture products for export, and spare parts and other machinery. The importer must post a bond or other security to guarantee the reexportation of the temporary imports. Because it is only available to exporters, we preliminarily determine that PITEX provides countervailable benefits to the extent that it provides duty exemptions on temporary imports of merchandise not physically incorporated into exported products.

During the review period, five firms used the PITEX program for temporary imports of machinery and spare parts which are not physically incorporated into exported products. To calculate the benefit from this program, we first calculated the duties that should have been paid on the non-physically incorporated items that were imported under the PITEX program during the review period. We then divided that amount by the company's total exports. We then weight-averaged the resulting benefit by each company's proportion of total exports of subject merchandise to the United States during the review period. On this basis, we preliminarily determine the benefit from this program to be 0.075 percent *ad valorem.*

(5) Certificates of Fiscal Promotion (CEPROFI)

Certificates of Fiscal Promotion (CEPROFI) are tax certificates used to promote the goals of the National Development Plan (NDP). They are granted in conjunction with investments in designated industrial activities or geographic regions and can be used to pay a variety of federal tax liabilities. Prior to December 30, 1987, companies could receive CEPROFIs under three provisions: under Category I, CEPROFIs were available for the manufacture and processing of certain raw materials, construction, and capital goods; under Category II, CEPROFIs were available for particular industrial activities; and, under Category II, CEPROFIs were granted to companies purchasing Mexican-made equipment. These certificates do not expire; they can be redeemed at any time in the future.

Although the CEPROFI program was eliminated by decree on December 30, 1987, during the review period one company redeemed two CEPROFIs that it had received for the purchase of Mexican-made equipment, while the program was still active. The Department, however, has determined that CEPROFIs granted under this provision are not countervailable because such certificates were available to any company purchasing Mexican-made equipment. See, Preliminary Results of Countervailing Duty Administrative Review; Certain Textile Mill Products from Mexico (55 FR 20504; May 17, 1990). Therefore, we preliminarily determine that no benefits were granted to the subject merchandise by the CEPROFI program during the review period.

(6) Other Programs

We also examined the following programs and preliminarily determine that exporters of the subject merchandise did not use them during the review period:

(A) Other BANCOMEXT preferential financing;
(B) Import duty reductions and exemptions;
(C) State tax incentives;
(D) NAFINSA FONEI-type financing; and
(E) NAFINSA FOGAIN-type financing.

Preliminary Results of Review

As a result of our review, we preliminarily determine the net subsidy to be 0.09 percent *ad valorem* for all companies during the period January 1, 1990 through December 31, 1990. In accordance with 19 CFR 355.7, any rate less than 0.5 percent *ad valorem* is *de minimis.*

Upon completion of this review, the Department intends to instruct the Customs Service to liquidate, without regard to countervailing duties, shipments of this merchandise from Mexico exported on or after January 1, 1990 and on or before December 31, 1990.

The Department also intends to instruct the Customs Service to waive cash deposits of estimated countervailing duties, as provided by section 751(a)(1) of the Tariff Act, on all shipments of this merchandise from Mexico entered, or withdrawn from warehouse for consumption, on or after the date of publication of the final results of this administrative review.

Parties to the proceeding may request disclosure of the calculation methodology and interested parties may request a hearing not later than 10 days after the date of publication of this notice. Interested parties may submit written arguments in case briefs on these preliminary results within 30 days of the date of publication. Rebuttal briefs, limited to arguments raised in case briefs, may be submitted seven

days after the time limit for filing the case brief. Any hearing, if requested, will be held seven days after the scheduled date for submission of rebuttal briefs. Copies of case briefs and rebuttal briefs must be served on interested parties in accordance with 19 CFR 355.38(e).

Representatives of parties to the proceeding may request disclosure of proprietary information under administrative protective order no later than 10 days after the representative's client or employer becomes a party to the proceeding, but in no event later than the date the case briefs, under 19 CFR 355.38(c), are due.

The Department will publish the final results of this administrative review including the results of its analysis of issues raised in any case or rebuttal brief or at a hearing.

This administrative review and notice are in accordance with section 751(a)(1) of the Tariff Act (19 U.S.C. 1675(a)(1)) and 19 CFR 355.22.

Dated: December 5, 1991.

Alan M. Dunn,

Assistant Secretary for Import Administration.

APPENDIX

Certain Textile Mill Products From Mexico
C–201–405

Harmonized Tariff System (HTS) Numbers
1990 Administrative Review

3918.10.32	5205.42.00	5208.39.60	5403.32.00	5514.41.00	5803.90.30
3921.12.19	5205.43.00	5208.39.80	5403.33.00	5514.49.00	5804.10.00
3921.13.19	5205.44.00	5208.41.60	5403.39.00	5515.11.00	5804.21.00
3921.90.19	5206.11.00	5208.41.80	5406.10.00	5515.12.00	5804.29.00
3921.90.21	5206.12.00	5208.41.80	5406.20.00	5515.13.05	5804.30.00
4008.21.00	5206.13.00	5208.42.30	5407.10.00	5515.19.00	5805.00.25
4010.10.10	5206.14.00	5208.42.40	5407.41.00	5515.21.00	5805.00.30
5106.10.00	5206.15.00	5208.42.50	5407.42.00	5515.29.00	5805.00.40
5106.20.00	5206.31.00	5208.43.00	5407.43.20	5515.91.00	5806.31.00
5107.10.00	5206.32.00	5208.49.40	5407.44.00	5515.99.00	5806.32.10
5107.20.00	5206.33.00	5208.51.40	5407.52.20	5516.11.00	5806.40.00
5108.10.60	5206.34.00	5208.51.60	5407.53.10	5516.12.00	5808.90.00
5108.20.60	5206.35.00	5208.51.80	5407.53.20	5516.13.00	5810.10.00
5109.10.60	5206.41.00	5208.52.30	5407.54.00	5516.14.00	5810.91.00
5109.90.60	5206.42.00	5208.52.40	5407.60.05	5516.21.00	5810.92.00
5111.11.60	5206.43.00	5208.52.50	5407.60.10	5516.22.00	5811.00.20
5111.19.20	5206.44.00	5208.53.00	5407.60.20	5516.23.00	5901.10.20
5111.19.60	5206.45.00	5208.59.20	5407.71.00	5516.24.00	5901.90.40
5111.20.60	5207.10.00	5208.59.60	5407.72.00	5516.41.00	5902.10.00
5111.30.60	5207.90.00	5208.59.80	5407.73.20	5516.42.00	5902.20.00
5112.19.60	5208.11.20	5209.11.00	5407.74.00	5516.43.00	5902.90.00
5112.20.00	5208.12.40	5209.19.00	5407.81.00	5516.44.00	5903.10.30
5112.30.00	5208.13.00	5209.21.00	5407.82.00	5516.91.00	5903.20.30
5204.11.00	5208.19.40	5209.29.00	5407.83.00	5516.92.00	5903.90.30
5204.19.00	5208.21.20	5209.31.60	5407.84.00	5516.93.00	5905.00.90
5204.20.00	5208.21.40	5209.32.00	5407.91.05	5516.94.00	5906.91.30
5205.11.10	5208.22.40	5209.39.00	5407.91.20	5601.10.20	5906.99.30
5205.12.10	5208.22.60	5209.41.60	5407.92.05	5601.22.00	5907.00.90
5205.13.10	5208.23.00	5209.42.00	5407.92.20	5602.10.10	5911.10.20
5205.13.20	5208.29.40	5209.43.00	5407.93.05	5602.10.90	5911.20.10
5205.14.10	5208.29.60	5209.49.00	5407.93.20	5602.21.00	5911.31.00
5205.22.00	5208.31.40	5209.51.60	5407.94.05	5602.90.30	5911.32.00
5205.23.00	5208.31.60	5209.52.00	5407.94.20	5602.90.60	5911.90.00
5205.24.00	5208.31.80	5209.59.00	5408.10.00	5602.90.90	6001.10.20
5205.25.00	5208.32.30	5210.21.40	5408.21.00	5603.00.90	6001.10.60
5205.31.00	5208.32.40	5210.21.60	5408.22.00	5604.20.00	6001.22.00
5205.32.00	5208.32.50	5210.22.00	5408.23.20	5604.90.00	6001.92.00
5205.33.00	5208.33.00	5210.29.40	5408.24.00	5606.00.00	6002.10.80
5205.34.00	5208.39.20	5210.29.60	5408.31.05	5607.41.30	6002.20.10
		5210.31.40	5408.31.20	5607.49.15	6002.20.30
		5210.31.60	5408.32.05	5607.49.25	6002.20.60
		5210.32.00	5408.32.90	5607.49.30	6002.30.20
		5210.39.40	5408.33.05	5607.50.20	6002.43.00
		5210.39.60	5408.33.90	5607.50.40	6002.93.00
		5210.51.40	5408.34.05	5607.90.20	6301.10.00
		5210.51.60	5408.34.90	5608.11.00	6301.20.00
		5210.52.00	5508.10.00	5608.19.10	6301.30.00
		5210.59.40	5508.20.00	5701.10.16	6301.40.00
		5210.59.60	5509.12.00	5701.10.20	6301.90.00
		5211.31.00	5509.21.00	5701.90.20	6302.10.00
		5211.39.00	5509.22.00	5702.10.90	6302.21.20
		5211.51.00	5509.31.00	5702.31.10	6302.22.10
		5211.59.00	5509.32.00	5702.31.20	6302.22.20
		5212.21.60	5509.41.00	5702.32.10	6302.29.00
		5212.22.60	5509.51.30	5702.32.20	6302.31.20
		5212.23.60	5509.51.60	5702.39.20	6302.32.10
		5212.24.60	5509.53.00	5702.41.10	6302.32.20
		5212.25.60	5509.69.20	5702.41.20	6302.39.00
		5401.10.00	5509.69.40	5702.42.10	6302.40.10
		5401.20.00	5509.99.20	5702.42.20	6302.40.20
		5402.10.30	5509.99.40	5702.49.10	6302.51.20
		5402.20.30	5511.10.00	5702.51.20	6302.51.30
		5402.20.60	5511.20.00	5702.51.40	6302.51.30
		5402.31.30	5511.30.00	5702.52.00	6302.51.40
		5402.31.60	5512.11.00	5702.59.10	6302.52.10
		5402.32.30	5512.19.00	5702.59.20	6302.52.20
		5402.32.60	5512.21.00	5702.91.30	6302.53.00
		5402.33.30	5512.29.00	5702.91.40	6302.59.00
		5402.33.60	5512.91.00	5702.92.00	6302.60.00
		5402.39.30	5512.99.00	5702.99.10	6302.91.00
		5402.39.60	5513.11.00	5702.99.20	6302.92.00
		5402.41.00	5513.13.00	5703.10.00	6302.93.20
		5402.42.00	5513.19.00	5703.20.10	6302.99.20
		5402.43.00	5513.21.00	5703.20.20	6303.12.00
		5402.49.00	5513.23.00	5703.30.00	6303.19.00
		5402.51.00	5513.29.00	5704.10.00	6303.92.00
		5402.52.00	5513.33.00	5704.90.00	6303.99.00
		5402.59.00	5513.39.00	5705.00.20	6304.11.10
		5402.61.00	5513.41.00	5801.31.00	6304.11.20
		5402.62.00	5513.43.00	5801.33.00	6304.11.30
		5402.69.00	5513.49.00	5801.34.00	6304.19.05
		5403.10.30	5514.11.00	5801.35.00	6304.19.15
		5403.20.30	5514.19.00	5801.36.00	6304.19.20
		5403.20.60	5514.21.00	5802.30.00	6304.19.30
		5403.31.00	5514.29.00	5803.10.00	6304.91.00

6304.92.00	6304.99.60
6304.93.00	6307.10.20
6304.99.15	7019.20.10
6304.99.20	9404.90.90

[FR Doc. 91-29775 Filed 12-11-91; 8:45 am]

BILLING CODE 3510-DS-M

[C-357-801]

Certain Welded Carbon Steel Pipe and Tube From Argentina; Termination of Countervailing Duty Administrative Review

AGENCY: International Trade Administration/Import Administration, Department of Commerce.

ACTION: Notice of termination of countervailing duty administrative review.

SUMMARY: The Department of Commerce (the Department) hereby terminates the administrative review requested on standard pipe from Argentina. Standard pipe is one of four countervailing duty orders covering certain welded carbon steel pipe and tube products from Argentina. The review was initiated on October 18, 1991, for the period January 1, 1990 through December 31, 1990.

EFFECTIVE DATE: December 12, 1991.

FOR FURTHER INFORMATION CONTACT: Cameron Cardozo or Maria MacKay, Office of Countervailing Compliance, International Trade Administration, U.S. Department of Commerce, Washington, DC 20230; telephone: (202) 377-2786.

SUPPLEMENTARY INFORMATION: On September 27, 1991, Thypin Steel Company, Inc., an importer of standard pipe from Argentina, requested a countervailing duty administrative review of the order on standard pipe from Argentina for the period January 1, 1990 through December 31, 1990. No other interested parties requested reviews. On October 18, 1991, the Department initiated the administrative review for that period (56 FR 52254).

On November 21, 1991, Thypin Steel Company, Inc. withdrew its request for review. Under 19 CFR 355.22(a)(3), if the party or parties requesting review withdraw the request within ninety days of initiation, the Department will publish in the **Federal Register** a notice of "Termination of Countervailing Duty Administrative Review." Accordingly, the Department is terminating this review.

This notice is published in accordance with 19 CFR 355.22(a)(3).

Dated: December 5, 1991.

Roland L. MacDonald,

Acting Deputy Assistant Secretary for Compliance.

[FR Doc. 91-29776 Filed 12-11-91; 8:45 am]

BILLING CODE 3510-05-M

Export Trade Certificates of Review

AGENCY: International Trade Administration, Commerce.

ACTION: Notice of revocation of export trade certificates of review Nos. 84-00035, 89-00003 and 89-00013.

SUMMARY: The Department of Commerce had issued export trade certificates of review to Global Operations Company, Passport International, and International Lumber Company, Inc. Because the certificate holders have failed to file annual reports as required by law, the Department is revoking these certificates. This notice summarizes the notification letters sent to Global Operations Company, Passport International, and International Lumber Company, Inc.

FOR FURTHER INFORMATION CONTACT: George Muller, Director, Office of Export Trading Company Affairs, International Trade Administration, (202) 377-5131. This is not a toll-free number.

SUPPLEMENTARY INFORMATION: Title III of the Export Trading Company Act of 1982 ("the Act") (Pub. L. No. 97-290, 15 U.S.A. 4011-21) authorizes the Secretary of Commerce to issue export trade certificates of review. The regulations implementing title III ("the Regulations") are found at 15 CFR part 325 (1986). Pursuant to this authority, certificates of review were issued on February 19, 1985 to Global Operations Company (application No. 84-00035), on May 16, 1989 to Passport International (application No. 89-00003), on October 18, 1989 to International Lumber Company, Inc. (application No. 89-00013), respectively.

A certificate holder is required by law to submit to the Department of Commerce annual reports that update financial and other information relating to business activities covered by its certificate. (Section 308 of the Act, 15 U.S.C. 4018, § 235.14(a) of the Regulations, 15 CFR 325.14(a)). The annual report is due within 45 days after the anniversary date of the issuance of the certificate of review § 325.14(b) of the Regulations, 15 CFR 325.14(b)). Failure to submit a complete annual report may be the basis for revocation. Sections 325.10(a)(3) and 325.14(c) of the Regulations, 15 CFR 325.10(a)(3) and 325.14(c).

On February 12, 1991, the Department of Commerce sent to Global Operations Company a letter containing annual report questions with a reminder that its annual report was due on April 5, 1991. Additional reminders were sent on April 9, 1991 and on April 23, 1991. Similar letters were sent to Passport International on May 3, 1991, July 22, 1991 and August 22, 1991 to remind Passport International that its report was due on June 30, 1991 and to International Lumber Company, Inc. on October 3, 1990, December 7, 1990 and December 27, 1990 to remind International Lumber Company, Inc. that its annual report was due on December 2, 1990. The Department has received no written response from Global Operations Company, Passport International, or International Lumber Company, Inc. to any of these letters.

On October 25, 1991, and in accordance with § 325.10(c)(2) of the Regulations, (15 CFR 325.10(c)(2)) the Department of Commerce sent a letter by certified mail to notify the Global Operations Company, Passport International and International Lumber Company, Inc., respectively, that the Department was formally initiating the process to revoke their respective certificates for their failure to file an annual report. In addition, a summary of these letters allowing Global Operations Company, Passport International, and International Lumber Company, Inc. thirty days to respond was published in the **Federal Register** on October 31, 1991 at 56 FR 56059. Pursuant to § 325.10(c)(2) of the Regulations (15 CFR 325.10(c)(2)), the Department considers the failure of Global Operations Company, Passport International, and International Lumber Company, Inc. to respond to be an admission of the statements contained in their respective notification letters.

The Department has determined to revoke the certificates issued to Global Operations Company, Passport International, and International Lumber Company, Inc. for their failure to file an annual report. The Department has sent letters, dated December 4, 1991, to notify Global Operations Company, Passport International, and International Lumber Company, Inc. of its determination. The revocation is effective thirty (30) days from the date of publication of this notice. Any person aggrieved by this decision may appeal to an appropriate U.S. district court within 30 days from the date on which this notice is published in the **Federal Register** § 325.10(c)(4) and 325.11 of the Regulations, 15 CFR 324.10(c)(4) and 325.11 of the Regulations, 15 CFR 325.10(c)(4) and 325.11.

Dated: December 6, 1991.

George Muller,

Director, Office of Export Trading Company Affairs.

[FR Doc. 91-29681 Filed 12-11-91; 8:45 am]

BILLING CODE 3510-DR-M

National Oceanic and Atmospheric Administration

Endangered Species; Application for Permit; Southwest Fisheries Center, National Marine Fisheries Service (P77#42)

Notice is hereby given that the Applicant has applied in due form for a Permit to take and import endangered species as authorized by the Endangered Species Act of 1973 (16 U.S.C. 1531-1543) and the National Oceanic and Atmospheric Administration (NOAA), National Marine Fisheries Service (NMFS) regulations governing endangered fish and wildlife permits (50 CFR parts 217-222).

1. Applicant

Mr. David Nelson, U.S. Army Corps of Engineers, Waterways Experiment Station, 3909 Halls Ferry Road, Vicksburg, MS 39180.

Co-Investigators

Dr. James I. Richardson, Ms. Dena Dickerson, Mr. Larry Ogren.

2. Type of Permit

Scientific Purposes

3. Name and Number of Species

Loggerhead sea turtle (*Caretta caretta*), Green sea turtle (*Chelonia mydas*), Atlantic ridley sea turtle (*Lepidochelys kempi*), Leatherback sea turtle (*Dermochelys coriacea*), and Hawksbill sea turtle (*Eretmochelys imbricata*).

Each year a maximum of 1000 turtles will be captured directly with dedicated trawlers (pulling twin or single trawl nets) and collected from hopper dredges that capture turtles incidental to normal dredging operations in coastal shipping channels.

4. Type of Take

The applicant proposes to identify, photograph, measure, obtain blood samples, tag and release turtles that are caught both directly and incidentally within and adjacent to shipping channels along the Atlantic Coast, the Gulf of Mexico Coast, and possibly in Puerto Rico and the Virgin Islands. The objective of the proposed project is to better understand species composition, population densities, ecology, and behavior of sea turtles inhabiting shipping channels. Knowledge gained from the project will be used to design dredging schedules and techniques that reduce sea turtle incidental take.

Dead and injured turtles and turtles that do not respond to resuscitation techniques will be transferred to appropriate state agencies or to a permitted rehabilitation center.

5. Location and Duration of Activity

Sea turtles will be taken within and adjacent to shipping channels maintained by hopper dredges under jurisdiction of the U.S. Army Corps of Engineers. These shipping channels occur from New York to Miami along the Atlantic Coast, from Tampa to Corpus Christi along the Gulf of Mexico Coast, and possibly in Puerto Rico and the Virgin Islands. Sampling and mitigative relocations of sea turtles will be required during all months of the year as needed. An application is being made for a continuing permit.

Written data or views, or requests for a public hearing on this application should be submitted to the Assistant Administrator for Fisheries, NOAA, National Marine Fisheries Service, 1335 East-West Highway, Silver Spring, Maryland 20910, within 30 days of the publication of this notice. Those individuals requesting a hearing should set forth the specific reasons why a hearing on this particular application would be appropriate. The holding of such hearing is at the discretion of the Assistant Administrator for Fisheries. All statements and opinions contained in this application are summaries of those of the Applicant and do not necessarily reflect the views of NOAA, NMFS.

Documents submitted in connection with the above application are available for review by interested persons in the following offices: Office of Protected Resources, NOAA, NMFS, 1335 East-West Highway, Silver Spring, Maryland 20910; and Director, Southeast Region, NOAA, NMFS, 9450 Koger Boulevard, St. Petersburg, Florida 33702.

Dated: December 6, 1991.

Samuel W. McKeen,

Program Management Officer.

[FR Doc. 91-29727 Filed 12-11-91; 8:45 am]

BILLING CODE 3510-22-M

DEPARTMENT OF DEFENSE

Office of the Secretary

Defense Science Board Task Force on SDI Countermeasures

ACTION: Cancellation of meeting.

SUMMARY: The meeting notice for the Defense Science Board Task Force on SDI Countermeasures scheduled for November 22-23, 1991 as published in the **Federal Register** (Vol. 56, No. 219, Page 57620, Wednesday, November 13, 1991, FR Doc 91-27175) has been cancelled.

Dated: December 5, 1991.

Linda M. Bynum,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

[FR Doc. 91-29640 Filed 12-11-91; 8:45 am]

BILLING CODE 3810-01-M

Defense Science Board Task Force on SDI Countermeasures

ACTION: Change in location of Advisory Committee Meeting notice.

SUMMARY: The meeting of the Defense Science Board Task Force on SDI Countermeasures scheduled for December 13-14, 1991 as published in the **Federal Register** (Vol. 56, No. 219, Page 57620, Wednesday, November 13, 1991, FR Doc. 91-27175) will be held at Science Applications International Corporation, McLean, Virginia.

Dated: December 5, 1991.

Linda M. Bynum,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

[FR Doc. 91-29641 Filed 12-11-91; 8:45 am]

BILLING CODE 3810-01-M

Per Diem, Travel and Transportation Allowance Committee

AGENCY: Per Diem, Travel and Transportation Allowance Committee.

ACTION: Publication of changes in per diem rates.

SUMMARY: The Per Diem, Travel and Transportation Allowance Committee is publishing Civilian Personnel Per Diem Bulletin Number 158. This bulletin lists changes in per diem rates prescribed for U.S. Government employees for official travel in Alaska, Hawaii, Puerto Rico, the Northern Mariana Islands and possessions of the United States. Bulletin Number 158 is being published in the **Federal Register** to assure that travelers are paid per diem at the most current rates.

EFFECTIVE DATE: 1 December 1991.

SUPPLEMENTARY INFORMATION: This document gives notice of changes in per diem rates prescribed by the Per Diem,

Travel and Transportation Allowance Committee for non-foreign areas outside the continental United States. Distribution of Civilian Personnel Per Diem Bulletins by mail was discontinued effective June 1, 1979. Per Diem Bulletins published periodically in the **Federal Register** now constitute the only notification of change in per diem rates to agencies and establishments outside the Department of Defense.

The text of the Bulletin follows:

BILLING CODE 3810-01-M

MAXIMUM PER DIEM RATES FOR OFFICIAL TRAVEL IN ALASKA, HAWAII, THE COMMONWEALTHS OF PUERTO RICO AND THE NORTHERN MARIANA ISLANDS AND POSSESSIONS OF THE UNITED STATES BY FEDERAL GOVERNMENT CIVILIAN EMPLOYEES

LOCALITY	MAXIMUM LODGING AMOUNT (A)	+	M&IE RATE (B)	=	MAXIMUM PER DIEM RATE (C)	EFFECTIVE DATE
ALASKA:						
ADAK 5/	$ 10		$ 34		$ 44	10-01-91
ANAKTUVUK PASS	83		57		140	12-01-90
ANCHORAGE						
05-16--09-15	137		59		196	06-01-91
09-16--05-15	79		54		133	01-01-91
ANIAK	73		36		109	07-01-91
ATQASUK	129		86		215	12-01-90
BARROW	86		73		159	06-01-91
BETHEL	70		73		143	12-01-90
BETTLES	65		45		110	12-01-90
CANTWELL	62		46		108	06-01-91
COLD BAY	71		54		125	12-01-90
COLDFOOT	75		47		122	12-01-90
CORDOVA	74		89		163	01-01-91
CRAIG	67		35		102	07-01-91
DILLINGHAM	76		38		114	12-01-90
DUTCH HARBOR-UNALASKA	91		54		145	12-01-90
EIELSON AFB						
05-15--09-15	92		62		154	07-01-91
09-16--05-14	60		59		119	01-01-91
ELMENDORF AFB						
05-16--09-15	137		59		196	06-01-91
09-16--05-15	79		54		133	01-01-91
EMMONAK	60		40		100	06-01-91
FAIRBANKS						
05-15--09-15	92		62		154	07-01-91
09-16--05-14	60		59		119	01-01-91
FALSE PASS	80		37		117	06-01-91
FT. RICHARDSON						
05-16--09-15	137		59		196	06-01-91
09-16--05-15	79		54		133	01-01-91
FT. WAINWRIGHT						
05-15--09-15	92		62		154	07-01-91
09-16--05-14	60		59		119	01-01-91
HOMER	57		61		118	01-01-91
JUNEAU	96		70		166	01-01-91
KATMAI NATIONAL PARK	89		59		148	12-01-90
KENAI-SOLDOTNA						
05-01--09-30	86		70		156	05-01-91
10-01--04-30	64		70		134	01-01-91

MAXIMUM PER DIEM RATES FOR OFFICIAL TRAVEL IN ALASKA, HAWAII, THE COMMONWEALTHS OF PUERTO RICO AND THE NORTHERN MARIANA ISLANDS AND POSSESSIONS OF THE UNITED STATES BY FEDERAL GOVERNMENT CIVILIAN EMPLOYEES

LOCALITY	MAXIMUM LODGING AMOUNT (A)	+	M&IE RATE (B)	=	MAXIMUM PER DIEM RATE (C)	EFFECTIVE DATE
ALASKA: (CONT'D)						
KETCHIKAN	$ 81		$ 75		$156	01-01-91
KING SALMON 3/	75		59		134	12-01-90
KLAWOCK	75		36		111	07-01-91
KODIAK	68		61		129	01-01-91
KOTZEBUE	133		58		191	06-01-91
KUPARUK OILFIELD	75		52		127	12-01-90
METLAKATLA	79		44		123	07-01-91
MURPHY DOME						
05-15--09-15	92		62		154	07-01-91
09-16--05-14	60		59		119	01-01-91
NELSON LAGOON	102		39		141	06-01-91
NOATAK	77		66		143	12-01-90
NOME	61		75		136	01-01-91
NOORVIK	77		66		143	12-01-90
PETERSBURG	61		54		115	01-01-91
POINT HOPE	99		61		160	12-01-90
POINT LAY	106		73		179	12-01-90
PRUDHOE BAY-DEADHORSE	64		57		121	12-01-90
SAND POINT	75		36		111	07-01-91
SEWARD						
05-01--09-30	79		52		131	07-01-91
10-01--04-30	48		49		97	10-01-91
SHUNGNAK	77		66		143	12-01-90
SITKA-MT. EDGECOMBE	65		63		128	01-01-91
SKAGWAY	81		75		156	01-01-91
SPRUCE CAPE	68		61		129	01-01-91
ST. GEORGE	100		39		139	06-01-91
ST. MARY'S	60		40		100	12-01-90
ST. PAUL ISLAND	81		34		115	12-01-90
TANANA	61		75		136	01-01-91
TOK	59		59		118	01-01-91
UMIAT	97		63		160	12-01-90
UNALAKLEET	58		47		105	12-01-90
VALDEZ						
05-01--10-31	116		66		182	05-01-91
11-01--04-30	85		63		148	01-01-91
WAINWRIGHT	90		75		165	12-01-90
WALKER LAKE	82		54		136	12-01-90
WRANGELL	81		75		156	01-01-91
YAKUTAT	70		40		110	12-01-90

MAXIMUM PER DIEM RATES FOR OFFICIAL TRAVEL IN ALASKA, HAWAII, THE COMMONWEALTHS OF PUERTO RICO AND THE NORTHERN MARIANA ISLANDS AND POSSESSIONS OF THE UNITED STATES BY FEDERAL GOVERNMENT CIVILIAN EMPLOYEES

LOCALITY	MAXIMUM LODGING AMOUNT (A)	+	M&IE RATE (B)	=	MAXIMUM PER DIEM RATE (C)	EFFECTIVE DATE
ALASKA: (CONT'D)						
OTHER 3, 4/	$ 63		$ 47		$110	07-01-91
AMERICAN SAMOA	85		47		132	12-01-91
GUAM	99		59		158	12-01-90
HAWAII:						
ISLAND OF HAWAII: HILO	60		38		98	06-01-91
ISLAND OF HAWAII: OTHER	106		43		149	06-01-91
ISLAND OF KAUAI	112		48		160	06-01-91
ISLAND OF KURE 1/			13		13	12-01-90
ISLAND OF MAUI: KIHEI						
04-01--12-19	85		50		135	12-01-90
12-20--03-31	97		50		147	12-20-90
ISLAND OF MAUI: OTHER	62		50		112	06-01-91
ISLAND OF OAHU	95		42		137	06-01-91
OTHER	59		47		106	12-01-90
JOHNSTON ATOLL 2/	18		18		36	10-01-91
MIDWAY ISLANDS 1/			13		13	12-01-90
NORTHERN MARIANA ISLANDS:						
ROTA	45		31		76	12-01-90
SAIPAN	68		47		115	12-01-90
TINIAN	44		24		68	12-01-90
OTHER	20		13		33	12-01-90
PUERTO RICO:						
BAYAMON						
04-16--12-14	93		90		183	07-01-91
12-15--04-15	116		92		208	12-15-91
CAROLINA						
04-16--12-14	93		90		183	07-01-91
12-15--04-15	116		92		208	12-15-91
FAJARDO (INCLUDING LUQUILLO)						
04-16--12-14	93		90		183	07-01-91
12-15--04-15	116		92		208	12-15-91
FT. BUCHANAN (INCL GSA SERV CTR, GUAYNABO)						
04-16--12-14	93		90		183	07-01-91
12-15--04-15	116		92		208	12-15-91
MAYAGUEZ	84		58		142	07-01-91
PONCE	113		90		203	07-01-91
ROOSEVELT ROADS						
04-16--12-14	66		61		127	07-01-91
12-15--04-15	102		64		166	12-15-91

MAXIMUM PER DIEM RATES FOR OFFICIAL TRAVEL IN ALASKA, HAWAII, THE COMMONWEALTHS OF PUERTO RICO AND THE NORTHERN MARIANA ISLANDS AND POSSESSIONS OF THE UNITED STATES BY FEDERAL GOVERNMENT CIVILIAN EMPLOYEES

LOCALITY	MAXIMUM LODGING AMOUNT (A) +	M&IE RATE (B) =	MAXIMUM PER DIEM RATE (C)	EFFECTIVE DATE
PUERTO RICO: (CONT'D)				
SABANA SECA				
04-16--12-14	$ 93	$ 90	$183	07-01-91
12-15--04-15	116	92	208	12-15-91
SAN JUAN (INCL SAN JUAN COAST GUARD UNITS)				
04-16--12-14	93	90	183	07-01-91
12-15--04-15	116	92	208	12-15-91
OTHER	63	63	126	07-01-91
VIRGIN ISLANDS OF THE U.S.				
05-01--11-30	95	63	158	05-01-91
12-01--04-30	128	66	194	12-01-90
WAKE ISLAND 2/	4	17	21	12-01-90
ALL OTHER LOCALITIES	20	13	33	12-01-90

FOOTNOTES

1/ Commercial facilities are not available. The meal and incidental expense rate covers charges for meals in available facilities plus an additional allowance for incidental expenses and will be increased by the amount paid for Government quarters by the traveler.

2/ Commercial facilities are not available. Only Government-owned and contractor operated quarters and mess are available at this locality. This per diem rate is the amount necessary to defray the cost of lodging, meals and incidental expenses.

3/ On any day when US Government or contractor quarters are available and US Government or contractor messing facilities are used, a meal and incidental expense rate of $16.25 is prescribed to cover meals and incidental expenses at Shemya AFB and the following Air Force Stations: Cape Lisburne, Cape Newenham, Cape Romanzof, Clear, Fort Yukon, Galena, Indian Mountain, King Salmon, Sparrevohn, Tatalina and Tin City. This rate will be increased by the amount paid for US Government or contractor quarters and by $4 for each meal procured at a commercial facility. The rates of per diem prescribed herein apply from 0001 on the day after arrival through 2400 on the day prior to the day of departure.

4/ On any day when US Government or contractor quarters are available and US Government or contractor messing facilities are used, a meal and incidental expense rate of $34 is prescribed to cover meals and incidental

expenses at Amchitka Island, Alaska. This rate will be increased by the amount paid for US Government or contractor quarters and by $10 for each meal procured at a commercial facility. The rates of per diem prescribed herein apply from 0001 on the day after arrival through 2400 on the day prior to the day of departure.

5/ On any day when US Government or contractor quarters are available and US Government or contractor messing facilities are used, a meal and incidental expense rate of $25 is prescribed instead of the rate prescribed in the table. This rate will be increased by the amount paid for U.S. government or contractor quarters.

BILLING CODE 3810-01-C

Dated: December 6, 1991.

L.M. Bynum,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

[FR Doc. 91-29643 Filed 12-11-91; 8:45 am]

BILLING CODE 3810-01-M

Department of Army

Notice of Intent To Prepare an Environmental Impact Statement (EIS) for Operation of a Heat-Recovery Solid Waste Incinerator at Fort Lewis, WA

AGENCY: DOD, U.S. Army, Fort Lewis, Washington.

ACTION: Notice of intent to prepare an environmental impact statement.

SUMMARY: A heat-recovery solid waste incinerator is proposed for operation at Fort Lewis, Washington. The EIS will evaluate the impacts of methods for handling, treating, and disposing of solid waste in association with operation of the incinerator. The scope of the EIS will be on preprocessing of the waste and operational parameters of the incinerator. Fort Lewis and McChord AFB produce about 44,000 tons of nonhazardous solid waste a year which previously has been placed in the Fort Lewis sanitary landfill. The incinerator will extend the life of the landfill because the incinerator ash requires less land volume than disposal of untreated solid waste. Thus, the incinerator would extend the life of the landfill by about 25 years. The incinerator will augment the existing Fort Lewis space heating system through incinerating solid waste to produce by-product steam and hot water. The incinerator will enable Fort Lewis to retire two existing boiler plants that supply high termpeature hot water heat, thereby conserving fossil fuel and heating costs. Also, Fort Lewis will retire one incinerator used to destroy classified documents. Replacement of these less modern facilities is expected to result in a net decrease in air emissions. Alternatives:

a. No action (non-operation of the incinerator with continued landfilling).

b. Incineration with unsorted waste.

c. Presorting and recycling wastes to meet the 25 percent by weight recycling requirement (EPA's Emission Guidelines: Municipal Waste Combustors).

d. Presorting and recycling wastes to achieve greater than 25 percent recycling levels before incineration. As the Army evaluates impacts and reviews public comment, other alternatives may arise. These will be considered.

DATES: A public scoping meeting will be held to solicit input on significant environmental issues associated with the operation of the heat recovery incinerator. Because of the local scope of potential impacts, the public meeting will be held in the Fort Lewis/Tacoma area. The time, date, and exact location of this meeting will be announced in the local media at a later date.

In addition to the scoping meeting, written input to the scoping process is solicited. Comments in response to this NOI or as part of the scoping process are requested on or before January 27, 1992.

FOR FURTHER INFORMATION CONTACT: Questions concerning the proposed action or the NEPA process for the action, comments on this NOI, or written inputs to the scoping meeting or scoping process, should be mailed to: Headquarters, I Corps and Fort Lewis, Attn: AFZH-DEQ (James Benson), Fort Lewis, Washington 98433-5000.

Dated: December 6, 1992.

Lewis D. Walker,

Deputy Assistant Secretary of the Army, (Environment, Safety and Occupational Health), OASA (I,L&E).

[FR Doc. 91-29637 Filed 12-11-91; 8:45 am]

BILLING CODE 3710-08-M

Military Traffic Management Command; Open Meeting, Military Personnel Property Symposium

In accordance with section 10(a)(2) of the Federal Advisory Committee Act (Pub. L. 92-463), announcement is made of meeting of the Military Personal Property Symposium. This meeting will be held on 23 January 1992 at the Best Western Old Colony Inn, 625 First Street, Alexandria, Virginia, and will convene at 0830 hours and adjourn at approximately 1600 hours.

Proposed Agenda: The purpose of the symposium is to provide an open discussion and free exchange of ideas with the public on procedural changes to the Personal Property Traffic Management Regulation, DoD 4500.34R, and the handling of other matters of mutual interest concerning the Department of Defense Personal Property Shipment and Storage Program.

All interested persons desiring to submit topics to be discussed should contact the Commander, Military Traffic Management Command, ATTN: MTPP-M, 5611 Columbia Pike, Falls Church, VA 22041-5050, telephone (703) 756-1600, between 0800-1630 hours. Topics to be discussed should be received on or before 13 December 1991.

Kenneth L. Denton,

Army Federal Register Liaison Officer.

[FR Doc. 91-29684 Filed 12-11-91; 8:45 am]

BILLING CODE 3710-08-M

Defense Logistics Agency

Privacy Act of 1974; Computer Matching Program Between the Defense Finance and Accounting Service-Cleveland Center and the Defense Manpower Data Center of the Department of Defense

AGENCY: Defense Manpower Data Center, Defense Logistics Agency, Department of Defense.

ACTION: Notice of an internal Department of the Defense computer matching program between the Defense Finance and Accounting Service-Cleveland Center (DFAS-CL) and the Defense Manpower Data Center (DMDC) of the Department of Defense (DoD) for public comment.

SUMMARY: DMDC, as the matching agency under the Privacy Act of 1974, as amended, (5 U.S.C. 552a), is hereby giving constructive notice in lieu of direct notice to the record subjects of a computer matching program between DFAS-CL and DMDC that their records are being matched by computer. The record subjects are delinquent debtors of the DFAS-CL who are current or former Federal employees or military members receiving Federal salary or benefit payments and indebted and delinquent in their payment of debts owed to the United States Government under certain programs administered by DFAS-CL so as to permit DFAS-CL to pursue and collect the debt by voluntary repayment or by administrative or salary offset procedures under the provisions of the Debt Collection Act of 1982.

DATES: This proposed action will become effective January 13, 1992, and the computer matching will proceed accordingly without further notice, unless comments are received which would result in a contrary determination or if the Office of Management and Budget or Congress objects thereto. Any public comment must be received before the effective date.

ADDRESSES: Any interested party may submit written comments to the Director, Defense Privacy Office, 400 Army Navy Drive, room 205, Arlington, VA 22202-2884. Telephone (703) 614-3027.

SUPPLEMENTARY INFORMATION: Pursuant to subsection (o) of the Privacy Act of 1974, as amended, (5 U.S.C. 552a), DFAS–CL and DMDC have concluded a memorandum of understanding (MOU) to conduct a computer matching program between the agencies. The purpose of the match is to assist DFAS–CL in identifying and locating those delinquent debtors employed in another Federal agency or uniformed service, including retirees receiving a Federal benefit. DFAS–CL will use this information to initiate independent collection of these debts under the Debt Collection Act of 1982 when voluntary payment is not forthcoming or by administrative or salary offset procedures until the obligation is paid in full. These collection efforts will include requests by DFAS–CL of other Federal agencies to disclose and maintain debtor records which will be matched with DMDC's Federal employment/compensation records to collect debts owed to DFAS–CL. The parties to this MOU have determined that a computer matching program is the most efficient, effective and expeditious method for accomplishing this task with the least amount of intrusion of personal privacy of the individuals concerned. It was therefore concluded and agreed upon that computer matching would be the best and least obtrusive manner and choice for accomplishing this requirement.

A copy of the computer matching MOU between DFAS–CL and DMDC is available upon request to the public. Requests should be submitted to the address caption above or to the Defense Finance and Accounting Service-Cleveland Center, Accounting and Finance Department, Code 6112, 1240 East Ninth Street, Cleveland, OH 44199–2055.

Set forth below is a notice of the establishment of a computer matching program required by paragraph 6.c. of the Office of Management and Budget Guidelines on Computer Matching published in the **Federal Register** at 54 FR 25818 on June 19, 1989.

The matching agreement as required by 5 U.S.C. 552a(r) and an advance copy of this notice was submitted on November 29, 1991, to the Committee on Government Operations of the House of Representatives, the Committee on Governmental Affairs of the Senate, and the Administrator of the Office of Information and Regulatory Affairs, Office of Management and Budget pursuant to paragraph 4b of appendix I to OMB Circular No. A–130, "Federal Agency Responsibilities for Maintaining Records about Individuals," dated December 12, 1985 (50 FR 52738, December 24, 1985). This matching program is subject to review by OMB and Congress and shall not become effective until that review period has elapsed.

Dated: December 6, 1991.

L.M. Bynum,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

Computer Matching Program Between the Defense Finance and Accounting Service-Cleveland Center and the Defense Manpower Data Center of the Department of Defense for Debt Collection

A. Participating Agencies

Participants in this computer matching program are the Defense Finance and Accounting Service-Cleveland Center (DFAS–CL) and the Defense Manpower Data Center (DMDC) of the Department of Defense (DoD). DFAS–CL is the source agency, i.e., the agency disclosing the records for the purpose of the match. DMDC is the specific recipient or matching agency, i.e., the agency that actually performs the computer matching.

B. Purpose of the Match

The purpose of the match is to identify and locate delinquent debtors who are current or former Federal employees or military members receiving any Federal salary or benefit payments and indebted and delinquent in their repayment of debts owed to the United States Government under certain programs administered by DFAS–CL so as to permit DFAS–CL to pursue and collect the debt by voluntary repayments or by administrative or salary offset procedures under the provisions of the Debt Collection Act of 1982.

C. Authority for Conducting the Match

The legal authority for conducting the matching program is contained in the Debt Collection Act of 1982 (Pub. L. 97–365), 31 U.S.C. chapter 37, subchapter I (General) and subchapter II (Claims of the United States Government), 31 U.S.C. 3711 Collection and Compromise, 31 U.S.C. 3716–3718 Administrative Offset, 5 U.S.C. 5514 Installment Deduction for Indebtedness (Salary Offset); 10 U.S.C. 136, Assistant Secretaries of Defense, Appointment Powers and Duties; section 206 of Executive Order 11222; 37 U.S.C. 1007 Military Salary Offset; 4 CFR chapter II, Federal Claims Collection Standards (General Accounting Office-Department of Justice); 5 CFR 550.1101–550.1108 Collection by Offset from Indebted Government Employees (OPM); DoD Instruction 7045.18, Collection of Indebtedness due the United States (32 CFR Part 90); DoD Directive 7045.13 DoD Credit Management and Debt Collection Program, dated October 31, 1986.

D. Records to be Matched

The systems of records maintained by the respective agencies under the Privacy Act of 1974, as amended, 5 U.S.C. 552a, from which records will be disclosed for the purpose of this computer match are as follows:

1. This match will involve the DFAS-CL record system identified as NO7430–1, "Navy Debt Management and Collection System (NMCS)", last published in the **Federal Register** at 55 FR 48680 on November 21, 1990. The notice contains an appropriate routine use for the release of these records for this purpose. The DFAS–CL file contains information on approximately 37,000 debtors.

2. The DoD systems of records are S322.10 DMDC, "Defense Manpower Data Center Data Base", published at 56 FR 19838 on April 30, 1991, and S322.11 DLA–LZ, "Federal Creditor Agency Debt Collection Data Base", last published in the **Federal Register** at 52 FR 37495 on October 7, 1987. The DMDC files contained information on approximately ten million active duty, retired, and Reserve military members, current and former Federal civilian employees, and debtors obligated to DoD.

3. This computer match is internal within the DoD. The DoD is considered a single agency for routine use disclosure purposes under the Privacy Act. All routine uses published in DoD record system notices are for disclosure of records outside the DoD for a use that is compatible with the purpose for which the information was collected and maintained by DoD. The exchange of records for this match between DFAS–CL and DMDC is permitted under the exception of subsection (b)(1) of the Privacy Act, i.e., to those officers and employees of the agency which maintains the record who have a need for the record in the performance of their duties. Therefore, there is no requirement that either record system notice have a routine use for the match. Nevertheless, the exchange of the records is compatible with the purposes for which the information was collected and maintained in both systems. Moreover, there will be a disclosure accounting maintained by DMDC for any disclosures from the S322.10 DMDC and the S322.11 DLA–LZ record systems.

E. Description of Computer Matching Program

DFAS–CL, as the source agency, will provide DMDC with a magnetic tape of individuals who are indebted to the Navy. The tape will contain data elements on individual debtors. DMDC, as the recipient agency, will perform a computer match using all nine digits of the SSN of the DFAS–CL file against a DMDC computer data base. Matching records, "hits" based on the SSN, will produce the member's name, service or agency, category of employee, salary or benefit amounts, and current work or home address. Matching records will be returned to DFAS–CL in a standard 430 byte output record on tape. DFAS–CL will be responsible for verifying the information and for resolving any discrepancies or inconsistencies on an individual basis. DFAS–CL will be responsible for making the final determinations as to positive identification, amount of indebtedness, and recovery efforts as a result of the match. Debtors identified on the DMDC listing as in a Navy active duty, reserve, or retired pay status are treated as in-service debtors. If the debtor is employed by another Federal agency, a request for salary or administrative offset is issued to the employing agency. Debtors identified on the DMDC listing as in an Army, Air Force, or Marine Corps active duty, reserve or retired pay status are issued a military pay offset warning letter. If no response is received after 30 days, a Pay Adjustment Authorization is issued to deduct monthly installments from the debtor's military pay.

F. Individual Notice and Opportunity to Contest

It will be the responsibility of DFAS–CL to verify and determine whether the data from the DMDC match are consistent with the data from the DFAS–CL debtor file, and to resolve any discrepancies or inconsistencies as to positive identification. Any discrepancies or inconsistencies furnished by DMDC, or developed as the result of the match, such as amount of indebtedness or salaries of hits will be independently investigated and verified by DFAS–CL prior to any final adverse action being taken against the individual by DFAS–CL. There will be no adverse action taken based on raw hits.

Navy Debtors—There are two (2) primary types of salary offset:

Military Salary Offset—under title 37 U.S.C. 1007 (Deduction from Pay). Navy debtors who are currently serving in the Armed Forces in an active duty, reserve, or retired pay status.

Civilian Salary Offset—under 5 U.S.C. 5514 Navy debtors who are currently employed as a civilian or retired by a government agency.

Under subsection (c) of 37 U.S.C. 1007, an amount that a member of the Armed Forces is administratively determined to owe the United States may be deducted from the pay of the member in monthly installments. The debtor is notified in writing when collections are made under this authority. That notification includes information concerning the amount to be collected and the amount of monthly deductions. The debtor is given an opportunity to enter into a voluntary agreement to repay the debt under terms agreeable to DFAS–CL. The debtor is given an opportunity to inspect and copy records related to the debt and for review of the decision related to the debt. Requests for copies of the records relating to the debt shall be made no later than 10 days from the receipt by the debtor of the notice of indebtedness.

The debtor is entitled to a 30 day written notification informing the debtor of the circumstances under which the debt occurred, the amount owed, the intent to collect by deduction from pay if the amount owed is not paid in full, and an explanation of other rights of the debtor under the law.

The debtor is also entitled to an opportunity for a hearing concerning the existence or the amount of the debt, or when a repayment schedule is established other than by written agreement concerning the terms of the repayment schedule. The debtor shall be advised that a challenge to either the existence of the debt, the amount of the debt, or the repayment schedule, must be made within 30 days of receipt by the debtor of the notice of indebtedness or within 45 days after receipt of the records relating to the debt, if such records are requested by the debtor.

G. Inclusive Dates of the Matching Program

This computer matching program is subject to review by the Office of Management and Budget and Congress. If no objections are raised by either and the mandatory 30 day public notice period for comment has expired for this **Federal Register** notice with no significant adverse public comments in receipt resulting in a contrary determination, then this computer matching program becomes effective and the respective agencies may begin the exchange of data 30 days after the date of this published notice at a mutually agreeable time and may be repeated no more than twice a year. Under no circumstances shall the matching program be implemented before this 30 day public notice period for comment has elapsed as this time period cannot be waived. By agreement between DFAS–CL and DMDC, the matching program will be in effect and continue for 18 months with an option to renew for 12 additional months unless one of the parties to the agreement advises the other by written request to terminate or modify the agreement.

H. Address for Receipt of Public Comments or Inquiries

Director, Defense Privacy Office, 400 Army Navy Drive, room 205, Arlington, VA 22202–2884. Telephone (703) 614–3027.

[FR Doc. 91–29642 Filed 12–11–91; 8:45 am]
BILLING CODE 3810–01–M

DEPARTMENT OF EDUCATION

[CFDA No.: 84.073C]

National Diffusion Network Program: New State Facilitator Projects; Inviting Applications for New Awards for Fiscal Year (FY) 1992

Purpose of Program: To provide grants to disseminate exemplary education programs within the 50 States, the District of Columbia, and Puerto Rico. This program supports AMERICA 2000, the President's strategy for moving the Nation toward the National Education Goals, by making current information about exemplary programs available to educators across the country.

Eligible Applicants: Any public or nonprofit private agency, organization, or institution located in the State to be served may apply for a State Facilitator award.

Deadline for Transmittal of Applications: March 9, 1992.

Deadline for Intergovernmental Review: May 8, 1992.

Applications Available: January 3, 1992.

Available Funds: $6,370,000.

Estimated Range of Awards: $50,000–$225,000.

Estimated Average Size of Awards: $122,500.

Estimated Number of Awards: 52.

Note: The Department is not bound by any estimates in this notice.

Project Period: Up to 48 months.

Applicable Regulations: (a) The Education Department General Administrative Regulations (EDGAR) in 34 CFR parts 74, 75, 77, 79, 80, 81, 82, 85 and 86; (b) The regulations under 34 CFR

part 98 (Student Rights in Research, Experimental Activities, and Testing); and (c) The regulations for this program in 34 CFR parts 785 and 788.

For Applications or Information Contact: Mr. Thomas Wikstrom, U.S. Department of Education, 555 New Jersey Avenue, NW., room 510, Washington, DC 20208-5645. Telephone: (202) 219-2134. Deaf and hearing impaired individuals may call the Federal Dual Party Relay Service at 1-800-877-8339 (in the Washington, DC 202 area code, telephone 708-9300) between 8 a.m. and 7 p.m., Eastern time.

Program Authority: 20 U.S.C. 2962.

Dated: December 6, 1991.

Diane Ravitch,

Assistant Secretary and Counselor to the Secretary.

[FR Doc. 91-29671 Filed 12-11-91; 8:45 am]

BILLING CODE 4000-01-M

[CFDA No: 84.047]

Upward Bound Program; Grants Availability

AGENCY: Office of Postsecondary Education.

ACTION: Notice of limited extension of closing date under the Upward Bound Program for the University of Guam from December 6, 1991 to December 13, 1991.

On September 18, 1991 the Secretary of Education published in the **Federal Register** a Combined Application Notice for FY 1992 which included an application deadline date for the Upward Bound Program of December 6, 1991. On November 27, 1991 a typhoon occurred which resulted in substantial property damage and loss of power on Guam. As a result, the University of Guam is unable to complete the preparation of application materials in order to meet the Upward Bound deadline. The University was without electrical service for approximately one week. This document provides a limited extension of the December 6, 1991 deadline to December 13, 1991 for the University of Guam only, due to extraordinary circumstances surrounding the typhoon.

FOR FURTHER INFORMATION CONTACT: Richard T. Sonnergren, Acting Director, Division of Student Services, Department of Education, Washington, DC, 20202. Telephone (202) 708-4807. Deaf and hearing impaired individuals may call the federal Dual Party Relay Services at 1-800-877-8339 (in Washington, DC, 202 area code, telephone 708-9200) between 8 a.m. and 7 p.m., Eastern Time.

Program Authority: 20 U.S.C. 1070d-1a.

Dated: December 6, 1991.

Carolynn Reid-Wallace,

Assistant Secretary for Postsecondary Education.

[FR Doc. 91-29670 Filed 12-11-91; 8:45 am]

BILLING CODE 4000-01-M

National Assessment Governing Board; Teleconference Meeting

AGENCY: National Assessment Governing Board; Education.

ACTION: Notice of meeting.

SUMMARY: This notice sets forth the schedule and proposed agenda of a forthcoming teleconference meeting of the Design and Analysis Committee of the National Assessment Governing Board. This notice also describes the functions of the Board. Notice of this meeting is required under section 10(a)(2) of the Federal Advisory Committee Act. This document is intended to notify the general public of their opportunity to attend.

DATES: December 19, 1991.

TIME: 11 a.m. (e.t.).

PLACE: National Assessment Governing Board, suite 7322, 1100 L Street NW., Washington, DC.

FOR FURTHER INFORMATION CONTACT: Roy Truby, Executive Director, National Assessment Governing Board, suite 7322, 1100 L Street NW., Washington, DC, 20005-4013, Telephone: (202) 357-6938.

SUPPLEMENTARY INFORMATION: The National Assessment Governing Board is established under section 406(i) of the General Education Provisions Act (GEPA) as amended by section 3403 of the National Assessment of Educational Progress Improvement Act (NAEP Improvement Act), title III-C of the Augustus F. Hawkins—Robert T. Stafford Elementary and Secondary School Improvement Amendments of 1988 (Pub. L. 100-297), (20 USC 1221e-1).

The Board is established to advise the Commissioner of the National Center for Education Statistics on policies and actions needed to improve the form and use of the National Assessment of Educational Progress, and develop specifications for the design, methodology, analysis, and reporting of test results. The Board also is responsible for selecting subject areas to be assessed, identifying the objectives for each age and grade tested, and establishing standards and procedures for interstate and national comparisons. The Design and Analysis Committee of the National Assessment Governing Board will meet via telephone conference call on December 19, 1991, at 11 a.m. (ET). The proposed agenda includes discussion of the draft policy on linking NAEP to local and commercial tests; discussion of the NAGB policy on data collection and use associated with the NAEP participation rates for 1992; and the biennial evaluation of item development and review policy.

Records are kept of all Board proceedings and are available for public inspection at the U.S. Department of Education, National Assessment Governing Board, suite 7322, 1100 L Street, NW., Washington, DC, from 8:30 a.m. to 5 p.m.

Dated: December 4, 1991.

Diane Ravitch,

Assistant Secretary and Counselor to the Secretary.

[FR Doc. 91-29672 Filed 12-11-91; 8:45 am]

BILLING CODE 4000-01-M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. JD92-01588T, Wyoming-11 Addition]

State of Wyoming; NGPA Notice of Determination by Jurisdictional Agency Designating Tight Formation

December 6, 1991.

Take notice that on November 25, 1991, the Wyoming Oil and Gas Conservation Commission (Wyoming) submitted the above-referenced notice of determination pursuant to § 271.703(c)(3) of the Commission's regulations, that a portion of the Lower Lewis Formation in Sweetwater County, Wyoming, qualifies as a tight formation under section 107(b) of the Natural Gas Policy Act of 1978 (NGPA). The notice covers certain lands in Sweetwater County, Wyoming and consists of the following acreage:

Township 24 North, Range 97 West, 6th P.M.

Section 15: All	Section 29: All
Section 21: All	Section 33: All
Section 22: All	Section 34: All
Section 27: All	Section 35: All
Section 28: All	

The notice of determination also contains Wyoming's findings that the referenced portion of the Lower Lewis Formation meets the requirements of the Commission's regulations set forth in 18 CFR part 271.

The application for determination is available for inspection, except for material which is confidential under 18 CFR 275.206, at the Federal Energy

Regulatory Commission, 825 North Capitol Street, NE., Washington DC 20426. Persons objecting to the determination may file a protest, in accordance with 18 CFR 275.203 and 275.204, within 20 days after the date this notice is issued by the Commission.

Lois D. Cashell,

Secretary.

[FR Doc. 91-29719 Filed 12-11-91; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. RP84-53-015]

Ozark Gas Pipeline Corp.; Report of Refunds

December 6, 1991.

Take notice that on August 26, 1991, Ozark Gas Pipeline Corporation (Ozark) filed a report showing refunds of $689,348.50 to Columbia Gas Transmission Corporation and Tennessee Gas Pipeline Company due to a reduction in a commodity rate from $0.1264 to $0.0610 effective January 1, 1991. The refunds were made in compliance with a Settlement approved by Commission order issued June 5, 1991, in Docket Nos. RP84-53-000, *et al.*

Any person desiring to protest said filing should file a protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426, in accordance with rule 211 of the Commission's Rules of Practice and Procedure 18 CFR 385.211. All such protests should be filed on or before December 12, 1991. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Copies of this filing are on file with the Commission and are available for public inspection.

Lois D. Cashell,

Secretary.

[FR Doc. 91-29718 Filed 12-11-91; 8:45 am]

BILLING CODE 6717-01-M

[Docket Nos. TM92-2-55-000 and TQ92-1-55-001]

Questar Pipeline Co.; Tariff Filing

December 5, 1991.

Take notice that Questar Pipeline Company, on November 27, 1991, tendered for filing and acceptance the following tariff sheets to its FERC Gas Tariff:

Substitute Fifteenth Revised Sheet No. 12 to Original Volume No. 1 to be effective December 1, 1991

Sixteenth Revised Sheet No. 12 to Original Volume No. 1,

Seventeenth Revised Sheet No. 5 to Original Volume No. 1-A and

Eighth Revised Sheet No. 8 to Original Volume No. 3 to be effective January 1, 1992

Questar states that this filing (1) revises the Statement of Rates filed in its November 6, 1991, purchase gas cost adjustment filing by reflecting new base rates as filed in Questar's November 15, 1991, compliance filing in Docket No. RP91-140-008 and (2) implements the 1992 Gas Research Institute charge authorized by the Commission on October 1, 1991.

Questar requests an effective date of December 1, 1991, for Substitute Fifteenth Revised Sheet No. 12 and January 1, 1992, for the tariff sheets submitted to implement the GRI charge.

Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426, in accordance with Rules 385.211 and 385.214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214). All such motions or protests should be filed on or before December 11, 1991. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Persons that are already parties to this proceeding need not file a motion to intervene in this matter. Copies of this filing are on file with the Commission and are available for public inspection.

Lois D. Cashell,

Secretary.

[FR Doc. 91-29664 Filed 12-11-91; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. RP91-207-001]

Ringwood Gathering Co.; Compliance Filing

December 6, 1991.

Take notice that on October 28, 1991, Ringwood Gathering Company (Ringwood) filed a plan detailing Ringwood's proposed disposition of any amounts remaining in its Purchased Gas Accounts (PGA). The plan was filed pursuant to the Commission's order in Docket No. RP91-207-000 dated September 13, 1991.

Ringwood submits the following plan for the Commission's review and consideration. Ringwood's PGA Account No. 191 reflects an underrecovery of $9,201 at the end of its third quarter, May 31, 1991. Ringwood states that it forfeits the right to recover this amount from its former jurisdictional markets, i.e., Williams Natural Gas Company and Oklahoma Natural Gas Company.

Any person desiring to protest said filing should file a protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426, in accordance with Rule 211 of the Commission's Rules of Practice and Procedure—18 CFR 385.211. All such protests should be filed on or before December 16, 1991. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Copies of this filing are on file with the Commission and are available for public inspection.

Lois D. Cashell,

Secretary.

[FR Doc. 91-29715 Filed 12-11-91; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. PR92-3-000]

Southeastern Natural Gas Co.; Petition for Rate Approval

December 6, 1991.

Take notice that on November 27, 1991, Southeastern Natural Gas Company (Southeastern) filed pursuant to § 284.123(b)(2) of the Commission's regulations, a petition for rate approval requesting that the Commission approve as fair and equitable a maximum reservation fee of $4.402 per Mcf and a maximum commodity charge of $0.029 per Mcf for firm transportation and a maximum rate of $0.174 per Mcf for interruptible transportation plus 1% for fuel allowance for transportation of natural gas under section 311(a)(2) of the Natural Gas Policy Act of 1978 (NGPA).

Southeastern states that it is a Hinshaw pipeline company which currently transports and sells gas within Ohio pursuant to Ohio authorization and regulation. It states that it received a blanket certificate pursuant to § 284.224 of the Commission's regulations in Docket No. CP91-2688-000 which certificate authorizes it to engage in the sale, transportation, and assignment of natural gas that is subject to the Commission's jurisdiction under the NGA to the same extent and in the same manner that intrastate pipelines are authorized to engage in such activities by subparts C, D, and E of part 284 of the Commission's regulations.

Pursuant to § 284.123(b)(2)(ii), if the Commission does not act within 150 days of the filing date, the rate will be deemed to be fair and equitable and not in excess of an amount which interstate pipelines would be permitted to charge

for similar transportation service. The Commission may, prior to the expiration of the 150 day period, extend the time for action or institute a proceeding to afford parties an opportunity for written comments and for the oral presentation of views, data and arguments.

Any person desiring to participate in this rate proceeding must file a motion to intervene accordance with §§ 385.211 and 385.214 of the Commission's rules of practice and procedures. All motions must be filed with the Secretary of the Commission on or before December 27, 1991. The petition for rate approval is on file with the Commission and is available for public inspection.

Lois D. Cashell,

Secretary.

[FR Doc. 91-29716 Filed 12-11-91; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. TA92-1-18-000]

Texas Gas Transmission Corp.; Proposed Changes in FERC Gas Tariff

December 6, 1991.

Take notice that Texas Gas Transmission Corporation (Texas Gas), on November 27, 1991, tendered for filing the following revised tariff sheets to its FERC Gas Tariff, Original Volume No. 1:

Forty-eighth Revised Sheet No. 10
Forty-eighth Revised Sheet No. 10A
Twenty-ninth Revised Sheet No. 11
Nineteenth Revised Sheet No. 11A
Nineteenth Revised Sheet No. 11B

Texas Gas states that these tariff sheets reflect changes in projected purchased gas costs and the unrecovered purchased gas cost surcharge pursuant to the Annual PGA provision of the Purchased Gas Adjustment clause of its FERC Gas Tariff and are proposed to be effective February 1, 1992. Texas Gas further states that the proposed tariff sheets reflect a current commodity rate increase of $.1288 per MMBtu from the rates set forth in the quarterly PGA filed September 30, 1991 (Docket No. TQ92-1-18), and a decrease of $(.1193) per MMBtu in the Unrecovered Purchased Gas Cost surcharge. No changes in the demand rates of SGN standby rates are proposed in the instant filing.

Copies of the filing were served upon Texas Gas's jurisdictional customers and interested state commissions.

Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426, in accordance with §§ 385.214 and 385.211 of the Commission's Rules and Regulations. All such protests or motions should be filed on or before December 27, 1991. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection in the Public Reference Room.

Lois D. Cashell,

Secretary.

[FR Doc. 91-29717 Filed 12-11-91; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. TA92-1-17-000]

Texas Eastern Transmission Corp.; Proposed Changes in FERC Gas Tariff

December 6, 1991.

Take notice that Texas Eastern Transmission Corporation (Texas Eastern) on December 2, 1991 tendered for filing as part of its FERC Gas Tariff, Fifth Revised Volume No. 1, six copies of tariff sheets listed on the attached appendix A.

The proposed effective date of these revised tariff sheets is February 1, 1992.

Texas Eastern states that the tariff sheets are being filed pursuant to section 23, Purchased Gas Cost Adjustment, and section 26, Electric Power Cost (EPC) Adjustment, contained (PGA) in the General Terms and Conditions of Texas Eastern's FERC Gas Tariff. This filing constitutes Texas Eastern's regular annual PGA filing to be effective February 1, 1992 pursuant to 18 CFR 154.305 and also constitues Texas Eastern's semiannual adjustment to reflect changes in electric power costs pursuant to section 26 of the General Terms and Conditions of its FERC Gas Tariff.

Texas Eastern states that in compliance with § 154.305(a)(2) of the Commission's Regulations, a report containing detailed computations for the derivation of the PGA current adjustment to be applied to Texas Eastern's effective rates is enclosed in the format as prescribed by FERC Form No. 542-PGA (Revised) and FERC's Notice of Criteria for Accepting Electronic PGA Filings dated April 12, 1991.

Texas Eastern states that the PGA changes proposed in this filing consist of Current Adjustments and Surcharge Adjustments as follows for the components of Texas Eastern's sales rates:

Rate component	Current adjustment	Surcharge adjustment
Demand	$0.084/dth	$0.976/dth
Commodity	($0.9914)/dth	$0.0845/dth

These current adjustments represent the change in Texas Eastern's projected quarterly cost of purchased gas from Texas Eastern's November 1, 1991 quarterly filing in Docket No. TQ92-1-17. The Surcharge Adjustments are designed to amortize the Current Deferral Subaccount Balance in Account No. 191 as of September 30, 1991 over the 12-month period beginning February 1, 1992.

Texas Eastern states that copies of its filing have been served on all Authorized Purchasers of Natural Gas from Texas Eastern and applicable state regulatory agencies.

Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426, in accordance with §§ 385.214 and 385.211 of the Commission's Rules and Regulations. All such motions or protests should be filed on or before December 27, 1991. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on a file with the Commission and are available for public

inspection in the Public Reference Room.

Lois D. Cashell,

Secretary.

[FR Doc. 91-29723 Filed 12-11-91; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. RP82-55-050]

Transcontinental Gas Pipe Line Corp.; Refund Report

December 6, 1991.

Take notice that Transcontinental Gas Pipe Line Corporation (Transco) on July 29, 1991, tendered for filing with the Federal Energy Regulatory Commission its refund report summarizing refunds made to Transco's S-2 customers on July 26, 1991, in accordance with Section 26 of General Terms and Conditions of Volume 1 of its FERC Gas Tariff. These refunds were received from Texas Eastern Transmission Corporation for the period September 1, 1988 through August 31, 1990 in Docket No. RP88-67 *et al.*

Any person desiring to protest said filing should file a protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426, in accordance with rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214). All such protests should be filed on or before December 13, 1991. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Persons that are already parties to the proceeding need not file a motion to intervene in this matter. Copies of this filing are on file with the Commission and are available for public inspection.

Lois D. Cashell,

Secretary.

[FR Doc. 91-29720 Filed 12-11-91; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. RP88-68-037]

Transcontinental Gas Pipe Line Corp.; Report of Refunds

December 6, 1991.

Take notice that on October 28, 1991, Transcontinental Gas Pipe Line Corporation (Transco) tendered for filing with the Federal Energy Regulatory Commission its Interest Rate True-Up of LPSP Charges made pursuant to sections 33, 35, and 37 of the General Terms and Conditions of Transco's FERC Gas Tariff, Third Revised Volume No. 1 for the period October 1, 1990, through September 30, 1991.

Any person desiring to protest said filing should file a protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426, in accordance with Rule 211 of the Commission's rules of Practice and Procedure (18 CFR 385.211). All such protests should be filed on or before December 13, 1991. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Copies of this filing are on file with the Commission and are available for public inspection.

Lois D. Cashell,

Secretary.

[FR Doc. 91-29722 Filed 12-11-91; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. RP85-39-008]

Wyoming Interstate Company, Ltd.; Report of Refunds

December 6, 1991

Take notice that on November 7, 1991, Wyoming Interstate Company, Ltd. (WIC) filed a refund report to comply with article VII of the Stipulation and Agreement filed on February 6, 1990 and as amended on November 13, 1990, and the Federal Energy Regulatory Commission's (Commission) Order of May 21, 1991, in Docket No. RP85-39-000. These amounts were paid by WIC on October 8, 1991, except for Columbia Gas Transmission Corporation (Columbia). Pursuant to an Order issued by the Commission on October 18, 1991, WIC has until November 29, 1991 to distribute refunds to Columbia. The amount refunded on October 8, 1991 was $68,057,836.26 ($59,271,016.99 in principal and $8,786,819.27 in interest).

The refund report summarizes transportation refund amounts for Period 1 (June 1, 1985 through June 30, 1987), Period II (July 1, 1987 through December 31, 1987) and Period III (January 1, 1988 through December 31, 1989) as agreed upon in the Stipulation and Agreement. The refund report further details transportation refund amounts for Period IIIA (January 1, 1990 through August 31, 1991) calculated in accordance with the amended Stipulation and Agreement.

Copies of WIC's filing have been served on WIC's jurisdictional customers, interested state commissions, and all parties to the proceedings.

Any person desiring to protest said filing should file a protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, Washington, DC 20426, in accordance with Rule 211 of the Commission's rules of Practice and Procedure (18 CFR 385.211). All such protests should be filed on or before December 13, 1991. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Copies of this filing are on file with the Commission and are available for public inspection.

Lois D. Cashell,

Secretary.

[FR Doc. 91-29721 Filed 12-11-91; 8:45 am]

BILLING CODE 6717-01-M

Office of Fossil Energy

[FE Docket No. 91-55-NG]

Hadson Gas Systems, Inc.; Order Granting Blanket Authorization To Import and Export Natural Gas to and From Mexico

AGENCY: Office of Fossil Energy, Department of Energy.

ACTION: Notice of order granting blanket authorization to import and export natural gas from and to Mexico.

SUMMARY: The Office of Fossil Energy of the Department of Energy gives notice that it has issued an order granting Hadson Gas Systems, Inc. blanket authorization to import up to 50 Bcf of natural gas from Mexico and to export up to 20 Bcf of natural gas to Mexico over a two-year period beginning on the date of first delivery.

A copy of this order is available for inspection and copying in the Office of Fuels Programs Docket Room, 3F-056, Forrestal Building, 1000 Independence Avenue, SW., Washington, DC 20585, (202) 586-9478. The docket room is open between the hours of 8 a.m. and 4:30 p.m., Monday through Friday, except Federal holidays.

Issued in Washington, DC, December 6, 1991.

Anthony J. Como,

Director, Office of Coal & Electricity, Office of Fuels Programs, Fossil Energy.

[FR Doc. 91-29753 Filed 12-11-91; 8:45 am]

BILLING CODE 6450-01-M

[FE Docket No. 91-45-NG]

Western Gas Marketing USA Ltd.; Application for Long-Term Authorization To Import Natural Gas From Canada

AGENCY: Office of Fossil Energy, Department of Energy.

ACTION: Notice of application for long-term authorization to import natural gas from Canada.

SUMMARY: The Office of Fossil Energy (FE) of the Department of Energy (DOE) gives notice of receipt of an application filed by Western Gas Marketing, USA Ltd. (Western Gas USA) on July 1, 1991, for authorization to import up to 25,000 Mcf per day of Canadian natural gas over a term that would expire October 31, 2001. Western Gas USA proposes to buy this gas from Western Gas Marketing Limited (WGML) for resale to Northern Natural Gas Company (Northern). The gas would enter the United States near Monchy, Saskatchewan, where the facilities of Foothills Pipeline (Yukon) Ltd. ("Foothills") interconnect with those of Northern Border Pipeline Company (Northern Border).

The application is filed under section 3 of the Natural Gas Act and DOE Delegation Order Nos. 0204–111 and 0204–127. Protests, motions to intervene, notices of intervention and written comments are invited.

DATES: Protests, motions to intervene or notices of intervention, as applicable, requests for additional procedures and written comments are to be filed at the address listed below no later than 4:30 p.m., eastern time, January 13, 1992.

ADDRESSES: Office of Fuels Programs, Fossil Energy, U.S. Department of Energy, Forrestal Building, room 3F–056, FE–50, 1000 Independence Avenue, SW., Washington, DC 20585, (202) 586–9478.

FOR FURTHER INFORMATION CONTACT:

Frank Duchanie, Office of Fuels Programs, Fossil Energy, U.S. Department of Energy, Forrestal Building, room 3F–094, FE–53, 1000 Independence Avenue, SW., Washington, DC 20585, (202) 586–8233.

Diane Stubbs, Office of Assistant General Counsel for Fossil Energy, U.S. Department of Energy, Forrestal Building, room 6E–042, GC–14, 1000 Independence Avenue, SW., Washington, DC 20585, (202) 586–6667.

SUPPLEMENTARY INFORMATION: Western Gas USA, a Delaware corporation, markets domestic and imported gas in the United States. The applicant is an affiliate of WGML, the Canadian supplier, and both are wholly-owned subsidiaries of TransCanada PipeLines Limited (TransCanada). Northern and Western Gas USA are not affiliated.

On November 1, 1990, Western Gas USA entered into two contracts. The first contract (the WGML Contract) provides for the sale of natural gas by WGML to Western Gas USA. The second contract (the Northern Contract) provides for the resale of the gas purchased by Western Gas USA under the WGML contract to Northern. Deliveries under the WGML contract and the Northern contract, which run concurrently, commenced on November 1, 1990, under blanket import authority granted Western Gas USA by DOE/FE Opinion and Order No. 442, 1 FE Para 70,368 (1990).

The key provisions of this import arrangement are controlled by the terms of the Northern contract. WGML is obligated under the WGML contract to deliver the volume of gas nominated each day by Western Gas USA, up to 25,000 Mcf per day, the daily contract quantity in the Northern contract. The Northern contract permits Northern to specify a portion of its daily nomination as base volumes and the remainder as incentive volumes. If Northern fails to so specify or if Northern and Western Gas USA fail to agree on a price for incentive volumes, all volumes nominated by Northern for such month will be deemed to be base volumes. Northern must nominate base volumes which equal or exceed the minimum annual quantity under the Northern contract. In the first three contract years, the minimum annual quantity would equal 75 percent of the annual contract quantity (daily contract quantity multiplied by the number of days in the contract year), and 60 percent for each subsequent contract year. If Northern nominates less than the minimum annual quantity, Western Gas USA would credit and reclassify as base volumes those incentive volumes necessary to eliminate the base volume deficiency for the contract year. If, after reclassification of the incentive volumes, the base volumes remain less than the minimum annual quantity (less two percent (2%) of the annual contract quantity), Western Gas USA could assess a deficiency charge equal to 25 percent of Northern's weighted average cost of gas (WACOG) for the contract year times the remaining base volume deficiency. The Northern contract also permits a volume reduction if Northern experiences a significant reduction in gas sales.

Under the WGML contract, Western Gas USA would pay WGML the sum of the demand and commodity charges payable each month by Northern under the Northern contract, less the total cost incurred by Western Gas USA for transportation of the gas on the Northern Border system, and any amounts payable by Western Gas USA for U.S. Customs user fees arising out of the import of the WGML contract volumes into the United States.

Under the Northern contract, Northern would pay Western Gas USA an amount in Canadian dollars that is the sum of:

The quantity of base volumes delivered during such month, multiplied by the base volumes price; Plus

The quantity of incentive volumes delivered during such month, multiplied by the negotiated incentive volumes price; Plus

The total cost, if any, incurred by Western Gas USA, WGML, and TransCanada during such month for transportation commodity charges and fuel gas in order to transport the base volumes and incentive volumes delivered to Northern during such month on the transmission systems of NOVA, Foothills, and Northern Border; Plus

The monthly demand charge.

The base volume price under the Northern contract would equal the WACOG price less the commodity charge credit based on the percentage of Canadian transporter charges which Northern is required under FERC Order 256 policy to recover in the commodity portion of its rates. The incentive volume price would be negotiated each month.

The monthly demand charge would equal the sum of service tolls billed by (i) NOVA to TransCanada for the firm transportation of the import volumes within Alberta; (ii) the Foothills System for firm transportation from McNeil, Alberta, to Monchy, Saskatchewan; and (iii) the Northern Border system. However, the monthly demand charge for each month of the first two contract years would consist only of the Northern Border (iii) charge. For each month during the third contract year the monthly demand charge would consist only of the (ii) and (iii) components. For the fourth contract year and thereafter, the monthly demand charge would consist of the sum of paragraphs (i), (ii), and (iii).

The Northern contract, to which the WGML contract price is tied, provides for annual renegotiation at the request of either party and arbitration if the parties cannot agree on a new price. The objective of renegotiation and arbitration would be to achieve a gas price that would be competitive with other long-term, firm gas supplies delivered into Northern's system and with prices paid under comparable contracts for Alberta gas.

WGML would fulfill its obligations to Western Gas USA through reserve based agreements with various Canadian producers. Among other obligations, the WGML contract requires TransCanada and WGML to

maintain adequate aggregate proven reserve supply.

The decision on Western Gas USA's application for import authority will be made consistent with DOE's natural gas import policy guidelines, under which the competitiveness of an import arrangement in the markets served is the primary consideration in determining whether it is in the public interest (49 FR 6684, February 22, 1984). In the case of a long-term arrangement such as this, other matters that will be considered in making a public interest determination include need for the natural gas and security of the long-term supply. Parties that may oppose this application should comment in their responses on these issues. Western Gas USA asserts that this import arrangement is in the public interest because it is needed, competitive, and its natural gas source will be secure. Parties opposing the import arrangement bear the burden of overcoming these assertions.

NEPA Compliance. The National Environmental Policy Act (NEPA), 42 U.S.C. 4321, *et seq.*, requires the DOE to give appropriate consideration to the environmental effects of its proposed actions. No final decision will be issued in this proceeding until the DOE has met its NEPA responsibilities.

Public Comment Procedures. In response to this notice, any person may file a protest, motion to intervene or notice of intervention, as applicable, and written comments. Any person wishing to become a party to the proceeding and to have the written comments considered as the basis for any decision on the application must, however, file a motion to intervene or notice of intervention, as applicable. The filing of a protest with respect to this application will not serve to make the protestant a party to the proceeding, although protests and comments received from persons who are not parties will be considered in determining the appropriate action to be taken on the application. All protests, motions to intervene, notices of intervention, requests for additional procedures, and written comments must meet the requirements that are specified by the regulation in 10 CFR part 590 and should be filed with the Office of Fuels Programs at the address listed above.

It is intended that a decisional record on the application will be developed through responses to this notice by parties, including the parties' written comments and replies thereto. Additional procedures will be used as necessary to achieve a complete understanding of the facts and issues. A party seeking intervention may request that additional procedures be provided, such as additional written comments, an oral presentation, a conference, or trial-type hearing. Any request to file additional written comments should explain why they are necessary. Any request for an oral presentation should identify the substantial question of fact, law, or policy at issue, show that it is material and relevant to a decision in the proceeding, and demonstrate why an oral presentation is needed. Any request for a conference should demonstrate why the conference would materially advance the proceeding. Any request for a trial-type hearing must show that there are factual issues genuinely in dispute that are relevant and material to a decision and that a trial-type hearing is necessary for a full and true disclosure of the facts.

If an additional procedure is scheduled, notice will be provided to all parties. If no party requests additional procedures, a final Opinion and Order may be issued based on the official record, including the application and responses filed by parties pursuant to this notice, in accordance with 10 CFR 590.316.

A copy of Western Gas USA's application is available for inspection and copying in the Office of Fuels Programs Docket Room, 3F–056 at the above address. The docket room is open between the hours of 8 a.m. and 4:30 p.m., Monday through Friday, except Federal holidays.

Issued in Washington, DC, December 6, 1991.

Anthony J. Como,

Director, Office of Coal and Electricity, Office of Fuels Programs, Fossil Energy.

[FR Doc. 91–29752 Filed 12–11–91; 8:45 am]

BILLING CODE 6450–01–M

Office of Hearings and Appeals

Cases Filed During the Week of November 1 Through November 8, 1991

During the Week of November 1 through November 8, 1991, the appeals and applications for exception or other relief listed in the appendix to this Notice were filed with the Office of Hearings and Appeals of the Department of Energy.

Under DOE procedural regulations, 10 CFR part 205, any person who will be aggrieved by the DOE action sought in these cases may file written comments on the application within ten days of service of notice, as prescribed in the procedural regulations. For purposes of the regulations, the date of service of notice is deemed to be the date of publication of this Notice or the date of receipt by an aggrieved person of actual notice, whichever occurs first. All such comments shall be filed with the Office of Hearings and Appeals, Department of Energy, Washington, DC 20585.

Dated: December 6, 1991.

George B. Breznay,

Director, Office of Hearings and Appeals.

LIST OF CASES RECEIVED BY THE OFFICE OF HEARINGS AND APPEALS

[Week of November 1 through November 8, 1991]

Date	Name and location of applicant	Case No.	Type of submission
Nov 4, 1991	Gulf/Brown's Gulf, Atlantic Beach, FL	RR300–113	Request for modification/recession in the Gulf proceeding. If granted: The October 25, 1991 Decision and Order (Case No. RF300–11859) issued to Brown's Gulf would be modified regarding the firm's application for refund submitted in the Gulf refund proceeding.
Do	Gulf/Corner Super Market, Ruleville, MS	RR300–114	Request for modification/rescission in the Gulf Oil proceeding. If granted: The October 25, 1991 Dismissal Letter (Case No. RF300–11866) issued to the Corner Super Market in connection with its Application for Refund in the Gulf Oil refund proceeding would be rescinded.

REFUND APPLICATIONS RECEIVED

Date received	Name of refund proceeding/name of refund applicant	Case No.
Nov. 1, 1991 thru Nov. 8, 1991	Texaco refund applications received	RF321-17872 thru RF321-17909
Do	Crude oil refund applications received	RF272-90449 thru RF272-90496
Nov. 1, 1991 thru Nov. 9, 1991	Gulf Oil refund applications received	RF300-18148 thru RF300-18520
Nov. 1, 1991	Corbo's ARCO	RF304-12609
Do	Rias ARCO	RF304-12610
Nov. 4, 1991	Eugene Maas	RF342-12
Do	Ken Clark Super 100	RF342-13
Do	R.A. Banks Clark Super 100	RF342-14
Do	Gray Textile Corporation	RF336-31
Do	Duro Finishing Corporation	RF336-32
Do	Blue Ribbon Tire	RF341-15
Do	Eithan's ARCO #1	RF304-12607
Do	Dates ARCO #1	RF304-12608
Nov. 5, 1991	Gene's Owens Oil Company	RF342-15
Do	Export Fuel Co., Inc.	RF333-20
Nov. 6, 1991	M & R Service Inc.	RF304-12611
Nov. 7, 1991	Columbia LGN Corporation	RF340-24
Do	Texaco Refining & Marketing	RF340-25
Do	Long Island Lighting Company	RF336-33
Do	Dick's Clark Service	RF342-16
Do	Wallace Copeland Clark Super	RF342-17
Do	Norbert L. Loos	RF342-18
Do	C & T ARCO	RF304-12612
Nov. 7, 1991	James Dorsey	RF304-12613
Nov. 8, 1991	Mayfair Exxon	RF307-10190
Do	Campbell's Function Exxon	RF307-10191
Do	Farmland Industrial Inc.	RF340-26
Do	Cy's Marine Plaza Clark	RF342-19
Do	Lee L. Aritz	RF342-20
Do	Draeger Oil Company	RF342-21

[FR Doc. 91-29754 Filed 12-11-91; 8:45 am]
BILLING CODE 6450-01-M

ENVIRONMENTAL PROTECTION AGENCY

[FRL-4039-81]

Agency Information Collection Activities Under OMB Review

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: In compliance with the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*), this notice announces that the Information Collection Request (ICR) abstracted below has been forwarded to the Office of Management and Budget (OMB) for review and comment. The ICR describes the nature of the information collection and its expected cost and burden.

DATES: Comments must be submitted on or before January 13, 1992.

FOR FURTHER INFORMATION CONTACT: Sandy Farmer at EPA, (202) 260-2740.

SUPPLEMENTARY INFORMATION:

Office of Solid Waste and Emergency Response

Title: General Hazardous Waste Facility Standards (ICR No. 1571). This ICR consolidates and amends eight previously approved collections. It renews ICR No. 807, RCRA Closure and Post-Closure (OMB No. 2050-0008) and reinstates; Parts of ICR No. 805, General Facility Operating Requirements (OMB No. 2050-0012); ICR No. 808, Contingency Plan for Hazardous Waste Management Facilities (OMB No. 2050-0011); ICR No. 809, Operating Record for Hazardous Waste Management Facilities (OMB No. 2050-0013); ICR No. 812, Information Requirements for Location Standards (OMB No. 2050-0010); ICR No. 947, RCRA Financial Requirements (OMB No. 2050-0036); parts of ICR No. 999, Information Requirements for Hazardous Waste Incinerators (OMB No. 2050-0002); and parts of ICR 1303, Miscellaneous Hazardous Waste Management Units (OMB No. 2050-0074).

Abstract: This ICR is a comprehensive presentation of the information collection activities for hazardous waste treatment, storage, and disposal facilities (TSDFs) as provided in 40 CFR parts 264 and 265. Owners or operators of hazardous waste facilities must collect, record, and in some cases report data to EPA. Activities include: Developing and implementing a written waste analysis plan for wastes received; recording facility inspections; documenting compliance with required precautions to prevent reactions for ignitable, reactive or incompatible wastes; maintaining a written operating record with information on general facility operating practices; submitting copies of records of waste disposal locations and quantities; preparing and maintaining contingency plans; submitting emergency reports whenever an imminent or actual emergency situation occurs; and developing and maintaining closure and post-closure plans, amending plans when appropriate and submitting to EPA closure certifications and post-closure notices. Owners or operators are also required to establish financial assurance mechanisms for closure, post-closure care, and liability for third-party bodily injury or property damage; to provide initial cost estimates and subsequent updates of those estimates for closure and post-closure care; and to provide EPA with evidence of the established financial mechanisms.

Recordkeeping requirements for owners or operators of hazardous waste facilities include record maintenance of all hazardous wastes handled; copies of waste disposal locations and quantities; operating methods; techniques and practices for treatment, storage, or disposal of hazardous waste; contingency plans; financial requirements; personnel training documents; and location, design, and construction of facilities.

Burden statement: The public reporting burden for this collection is estimated to average 73 hours per response and includes all aspects of the information collection, including the time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information. The estimated annual recordkeeping burden is 18 hours per recordkeeper.

Respondents: Owners and operators of TSDFs.

Estimated Number of Respondents: 4,443.

Estimated Number of Responses per Respondent: 1.

Estimated Total Annual Burden on Respondents: 404,850 hours.

Frequency of Collection: On occasion.

Send comments regarding the burden estimate, or any other aspect of this collection of information, including suggestions for reducing the burden, to:

Sandy Farmer, U.S. Environmental Protection Agency, Information Policy Branch (PM-223Y), 401 M Street, SW., Washington, DC 20460, and

Jonathan Gledhill, Office of Management and Budget, Office of Information and Regulatory Affairs, 725 17th St., NW., Washington, DC 20503.

Dated: December 2, 1991.

Paul Lapsley, *Director,*

Regulatory Management Division.

[FR Doc. 91-29738 Filed 12-11-91; 8:45 am]

BILLING CODE 6560-50-M

[FRL-4039-9]

Control Techniques Guideline Document: Reactor Processes and Distillation Operations in the Synthetic Organic Chemical Manufacturing Industry

AGENCY: Environmental Protection Agency (EPA).

ACTION: Release of a draft control techniques guideline (CTG) for public review.

SUMMARY: A draft CTG document for control of volatile organic compound (VOC) emissions from reactor processes and distillation operations in the synthetic organic chemical manufacturing industry (SOCMI) is available for public review and comment. This information document has been prepared to assist States in analyzing and determining reasonably available control technology (RACT) for stationary sources of VOC emissions located within certain ozone national ambient air quality standard nonattainment areas.

DATES: Comments must be received on or before February 10, 1991.

ADDRESSES: Comments. Comments should be submitted (in duplicate if possible) to: Central Docket Section (LE-131), Attention: Docket No. A-91-38, U.S. Environmental Protection Agency, 401 M Street, SW., Washington, DC 20460.

Control techniques guideline. Copies of the draft CTG may be obtained from the U.S. EPA Library (MD-35), Research Triangle Park, North Carolina 27711, telephone number (919) 541-2777.

FOR FURTHER INFORMATION CONTACT: Mr. Robert Rosensteel, (919) 541-5608, Emissions Standards Division (MD-13), Environmental Protection Agency, Research Triangle Park, North Carolina 27711.

SUPPLEMENTARY INFORMATION: The Clean Air Act Amendments of 1990 mandate that State Implementation Plans (SIPs) for certain ozone nonattainment areas be revised to require the implementation of RACT to limit VOC emissions from sources for which EPA has already published a CTG or for which it will publish a CTG between the date the amendments are enacted and the date an area achieves attainment status. Section 172(c)(1) requires that nonattainment area SIPs provide for the adoption of RACT for existing sources. As a starting point for ensuring that these SIPs provide for the required emissions reduction, EPA has defined RACT as "* * * the lowest emission limitation that a particular source is capable of meeting by the application of control technology that is reasonably available considering considering technological and economic feasibility. For a particular industry, RACT is determined on a case-by-case basis, considering the technological and economic circumstances of the individual source category" (44 FR 53761).

The CTG documents are intended to provide State and local air pollution authorities with an information base for proceeding with their own analysis of RACT to meet statutory requirements. These documents review existing information and data concerning the technical capability and cost of various control techniques to reduce emissions. Each CTG document contains a recommended "presumptive norm" for RACT for a particular source category based on EPA's current evaluation of capabilities and problems general to the source category. However, the "presumptive norm" is only a recommendation. Where applicable, EPA recommends that regulatory authorities adopt requirements consistent with the presumptive norm level, but authorities may choose to develop their own RACT requirements on a case-by-case basis, considering the economic and technical circumstances of the individual source category.

This CTG addresses RACT for control of VOC emissions from reactor processes and distillation operation processes in the SOCMI. The SOCMI is a large and diversified industry that produces hundreds of major chemicals through a variety of chemical processes. Reactor processes are those in which one or more substances are chemically altered to form one or more new organic chemicals. (This definition excludes processes employing air oxidation or oxygen enriched air oxidation processes to produce an organic chemical.) Distillation processes separate one or more feed streams (i.e., materials going into the process unit) into two or more product streams (i.e., materials leaving the process unit). The chemicals produced via reactor processes and distillation operations are listed in the CTG.

Dated: December 5, 1991.

Michael Shapiro,

Acting Assistant Administrator for Air and Radiation.

[FR Doc. 91-29736 Filed 12-11-91; 8:45 am]

BILLING CODE 6560-25-M

[FRL-4039-4]

EPA Policies Regarding the Role of Corporate Attitude, Policies, Practices, and Procedures, in Determining Whether to Remove a Facility From the EPA List of Violating Facilities Following a Criminal Conviction

AGENCY: Environmental Protection Agency.

ACTION: Policy statement.

SUMMARY: EPA clarifies its policy concerning the role of corporate attitude, policies, practices, and procedures in determining whether, in mandatory contractor listing cases, the condition giving rise to a criminal conviction has

been corrected. Section 306 of the Clean Air Act and section 508 of the Clean Water Act require correction of the condition giving rise to the conviction as a prerequisite for removal of a facility owned, operated, or supervised by a convicted person from the EPA List of Violating Facilities ("the List"). The purposes of this policy statement are to inform the public and the regulated community, thereby facilitating greater compliance with environmental standards; to formally restate criteria applied in EPA contractor listing cases over the past two years; and to provide EPA personnel with a readily available summary of EPA policies which will enable them to evaluate contractor listing cases.

FOR FURTHER INFORMATION CONTACT: Jonathan S. Cole, Chief, Contractor Listing Program, Office of Enforcement, United States Environmental Protection Agency, room 112 NE Mall (LE–133), 401 M St., SW., Washington, DC 20460. Telephone 202–260–8777.

SUPPLEMENTARY INFORMATION: Section 306 of the Clean Air Act (42 U.S.C. 7401 *et seq.*, as amended by Pub.L. 91–604 and Pub.L. 101–549), and section 508 of the Clean Water Act (33 U.S.C. 1251 *et seq.*, as amended by Pub.L. 92–500), and Executive Order 11738, authorized EPA to bar (after appropriate Agency procedures) facilities which have given rise to violations of the Clean Air Act (CAA) or the Clean Water Act (CWA) from being used in the performance of any federal contract, grant, or loan. On April 16, 1975, regulations implementing the requirements of the statutes and the Executive Order were promulgated in the **Federal Register** (see 40 CFR part 15, 40 FR 17124, April 16, 1975, as amended at 44 FR 6911, February 5, 1979). On September 5, 1985, revisions to those regulations were promulgated in the **Federal Register** (see 50 FR 36188, September 5, 1985). The regulations provide for the establishment of a List of Violating Facilities which reflects those facilities ineligible for use in nonexempt federal contracts, grants, loans, subcontracts, subgrants, or subloans.

Facilities which are placed on the EPA List of Violating Facilities are also listed by the General Services Administration (GSA) in its monthly publication, "Lists of Parties Excluded From Federal Procurement or Nonprocurement Programs," which is also updated daily by GSA.

This **Federal Register** Notice sets forth certain EPA policies which will be applied when facilities which have been placed on the List of Violating Facilities request to be removed from that List.

List of Subjects in 40 CFR Part 15

Administrative practice and procedure Air pollution control, Government contracts, Grant programs—environmental protection, Loan programs—environmental protection, Reporting and recordkeeping requirements, Water pollution control.

EPA Policy Regarding the Role of Corporate Attitude, Policies, Practices, and Procedures, in Determining Whether To Remove a Facility From the EPA List of Violating Facilities Following a Criminal Conviction

I. Introduction

This guidance memorandum clarifies EPA policy concerning the role of corporate attitude, [1] policies, practices, and procedures in determining whether, in mandatory contractor listing cases, [2] the condition giving rise to a criminal conviction has been corrected. Section 306 of the Clean Air Act ("CAA") and section 508 of the Clean Water Act ("CWA") require correction of the condition giving rise to the conviction as a prerequisite for removal of a facility owned, operated, or supervised by a convicted person from the EPA List of Violating Facilities ("the List").

II. Background

In 1990, EPA formally recognized that the condition leading to a conviction under section 309(c) of the CWA or section 113(c) of the CAA could include a convicted environmental violator's corporate attitude, policies, practices, and procedures regarding environmental compliance. In the Matter of Valmont Industries, Inc., (ML Docket No. 07–89–L068, Jan. 12, 1990) ("Valmont"). In Valmont, the decisions of both the Assistant Administrator for Enforcement (AA) and the EPA Case Examiner established the principle that the presence of a poor corporate attitude regarding compliance with environmental standards, thus creating a climate facilitating the likelihood of a violation, may be part of the condition giving rise to the conviction which must be corrected prior to removal of the facility from the List. 40 CFR 15.20.

Valmont was convicted of crimes of falsification and deception. The AA determined that not only was Valmont required to correct the physical conditions which led to its conviction, but that it also was required to demonstrate that it had implemented appropriate corporate policies, practices, and procedures, designed to ensure that the mere appearance of compliance with environmental standards was not put above actual compliance with those standards. The Case Examiner later affirmed the use of the corporate attitude standard in determining whether the condition leading to listing has been corrected.

Following Valmont, EPA has applied the corporate attitude test in other cases where facilities have requested removal from the List, including cases involving knowing or negligent conduct, not involving deliberate deception. See, Colorado River Sewage System Joint Venture, (ML Docket No. 09–89–L047, August 20, 1991); Zarcon Corp. (ML Docket No. 09–89–L058, Aug. 1, 1990); Sellen Construction Co. (ML Docket No. 10–89–L073, June 13, 1990). This memorandum clarifies the extent to which corporate attitude may be a relevant factor in cases involving knowing or negligent criminal conduct, which does not involve willful falsification or deception. It also clarifies the criteria which will be applied by EPA in determining whether the condition giving rise to a conviction has been corrected in a given case.

The purposes of this guidance are to inform the public and the regulated community, thereby facilitating greater compliance with environmental standards; to formally restate criteria applied in EPA contractor listing cases over the past two years; and to provide EPA personnel with a readily available summary of EPA policies which will enable them to evaluate contractor listing cases.

III. Scope of Application

The corporate attitude, policies, practices, and procedures of a listed facility's owner, operator, or supervisor will always be relevant when a facility that has been listed as the result of a criminal conviction requests removal from the List. How significant a factor the corporate attitude, policies, practices, and procedures will be depends upon the degree of intent involved in the violation at issue. The degree of intent shall be determined (for purposes of removal from the List) by the AA,[3] with reference to the facts of,

[1] The term "corporate attitude" refers to all organizational defendants, not only to incorporated entities.

[2] Although discretionary listing is outside the scope of this guidance, evaluation of corporate attitude, policies, practices, and procedures may be applied appropriately in discretionary listing cases as well.

[3] The Assistant Administrator will, as in all contractor listing removal cases, give considerable weight to the recommendations of the EPA Region in which the listed facility is located.

and the nature of the conduct involved in, each case. This shall not be determined solely by the nature or title of the crime,[4] or by the terms or language contained in any plea agreement.

In every case involving fraud, concealment, falsification, or deliberate deception, proof of change of corporate attitude must be demonstrated over an appropriate and generally substantial period of time, commensurate with the seriousness of the facts involved in the violation(s) (see section IV).

In most cases involving knowing misconduct, proof of change of corporate attitude must also be demonstrated over an appropriate period of time, commensurate with the seriousness of the facts involved in violation(s) (even if there was not affirmative fraud or concealment). There may be some extremely rare cases in which knowing conduct (not involving affirmative fraud or concealment) may be deemed to be relatively minor. In such rare cases, proof of change of corporate attitude may not be a significant factor.

In cases involving criminal negligence, proof of change in corporate attitude may be significant as it relates to ensuring prevention of further negligent violations. (E.g., in a negligent discharge case, proof of change of corporate attitude may be demonstrated by educating and training employees on proper treatment and disposal requirements and practices). In cases of serious negligence,[5] more significance may be placed on demonstrating proof of change of corporate attitude, before a facility will be removed from the List. In other cases of negligent violations,[6] a limited set of minor violations may exist which constitute criminal conduct resulting in conviction, but in which minimal significance will be placed on demonstrating proof of change of corporate attitude, policies, practices, and procedures.

In addition, a case may arise in which the violations which gave rise to listing occurred considerably before the request for removal. Nevertheless, as set forth at section IV., *infra*, to warrant removal, proof of change of corporate attitude for an appropriate continuing period of time, until the removal request is granted, is required if the crime involved fraud, or deliberate falsification or concealment, knowing misconduct (unless minor), or serious negligent violations.

If a listed facility is sold (after the conduct which gave rise to the conviction or listing), the new owner of that facility is obligated to demonstrate that appropriate and effective corporate policies, practices, and procedures are in place, in accordance with the criteria and factors outlined in this guidance, before the facility will be removed from the List.

IV. Criteria for Demonstrating Proof of Change in Corporate Attitude

In cases where proof of change of corporate attitude is relevant to determining whether the condition giving rise to a criminal conviction has been corrected, factors to which EPA will look include, but are not limited to, the following: [7]

A. Whether the owner, operator, or supervisor of the [listed facility] has put in place an effective program to prevent and detect environmental problems and violations of the law. An "effective program to prevent and detect environmental problems and violations of the law" means a program that has been reasonably designed, implemented, and enforced so that it will be effective in preventing and detecting environmental problems or violations, and criminal conduct.

The hallmark of an effective program is that the organization exercises due diligence in seeking to prevent and detect environmental problems or violations, or criminal conduct. Due diligence requires, at a minimum, that the organization has taken at least the following types of steps to assure compliance with environmental requirements.

1. The organization must have written policies defining the standards and procedures to be followed by its agents or employees.[8]

2. The organization must have specific high-level persons, not reporting to production managers, who have authority to ensure compliance with those standards and procedures.

3. The organization must have effectively communicated its standards and procedures to agents and employees, e.g., by requiring participation in training programs and by the dissemination of publications.

4. The organization must establish or have established an effective program for enforcing its standards, e.g., monitoring and auditing system designed to prevent or detect noncompliance; and a well-publicized system, under which agents and employees are encouraged to report, without fear of retaliation, evidence of environmental problems or violations, or criminal conduct within the organization.

5. The standards referred to in paragraph 1, above, must have been consistently enforced through appropriate disciplinary mechanisms.

6. After an offense or a violation has been detected, the organization must immediately take appropriate steps to correct the condition giving rise to the listing (even prior to the conviction or listing). The organization must also take all reasonable steps to prevent further similar offenses or violations, including notifying appropriate authorities of such offenses or violations, making any necessary modifications to the organization's program to prevent and detect environmental problems or violations of law, and discipline of individuals responsible for the offense or violation. This may include conducting an independent environmental audit to ensure that there are no other environmental problems or violations at the facility.

B. The precise actions necessary for an effective program to prevent and detect environmental problems or violations of law will depend upon a number of factors. Among the relevant factors are:

1. Size of organization: The requisite degree of formality of a program to prevent and detect violations of law or environmental problems will vary with the size of the organization; the larger the organization, the more formal the program should typically be.

2. Likelihood that certain offenses may occur because of the nature of its business: If, because of the nature of an organization's business, there is a

[4] E.g., a conviction for "negligent discharge" of pollutants under Clean Water Act section 309(c) may be a minor violation requiring minimal proof of change of corporate attitude, or it may be a significant violation reflecting knowing or deliberate conduct, requiring more substantial proof of such change. The determination will be made on the facts of each case. Criminal defendants and prosecutors frequently agree to enter a plea to a misdemeanor, rather than go to trial on more serious felony charges which may be supported by the facts.

[5] Cases involving convictions for criminal negligence may include a wide range of conduct, from relatively minor, e.g., accidental spillage of a can of paint, up to potentially disastrous, e.g., failure to train employees properly and to respond to oil leak detection systems, which results in a massive oil spill. The label of "negligence" alone does not adequately describe the nature and severity of the criminal conduct in a given case.

[6] E.g., accidental spillage of paint into a storm sewer.

[7] These criteria are adapted from the proposed U.S. sentencing guidelines for organizational defendants.

[8] Although specifics will be determined on a case-by-case basis, with reference to the conduct underlying the violation, examples include, but are not limited to, training on company rules, EPA requirements, ethical standards and considerations, and standards of criminal liability.

substantial risk that certain types of offenses or violations may occur, management must have taken steps to prevent and detect those types of offenses or violations. For example, if an organization handles toxic substances, it must have established standards and procedures designed to ensure that those substances are handled properly at all times.

3. Prior history of the organization: An organization's prior history may indicate types of offenses or violations that it should have taken actions to prevent. Recurrence of misconduct similar to that which an organization has previously committed casts doubt on whether it took all reasonable steps to prevent such misconduct.

An organization's failure to incorporate and follow applicable industry practice or the standards called for by an applicable governmental regulation weighs against a finding of an effective program to prevent and detect violations of law or environmental problems.

C. EPA will also consider additional voluntary environmental cleanup, or pollution prevention or reduction measures performed, above and beyond those required by environmental statutes or regulations, and voluntary compliance with pending environmental requirements significantly before such compliance is actually required.

In cases where probation is imposed by the sentencing court, the term of probation will be presumed to be an appropriate period of time for demonstrating a change of corporate attitude, policies, practices, and procedures.[9] This presumption may be rebutted by either the owner, operator, or supervisor of the listed facility, or by the government, upon a demonstration that the probation terms is not an appropriate time in which to demonstrate such change. If probation is not imposed in the criminal case, the AA shall determine, after a request for removal from the List is filed, what is an appropriate period of time in which to demonstrate that the condition leading to conviction has been corrected. This determination shall be based upon the facts of each case.

The time required to demonstrate a change of corporate attitude, policies, practices, and procedures shall be presumed to be an appropriate period, as determined by the AA, commensurate with (a) the nature, extent, and severity of the violations (including the length of time during which the violations occurred), and (b) the complexity and extent of remedial action necessary to ensure that appropriate policies, practices, and procedures (including, but not limit to, any necessary employee education or training programs) have been completed. At a minimum, the period of time shall be sufficient to demonstrate successful performance, consistent with those policies, practices, and procedures, including consideration of steps which were taken prior to conviction or listing.

The policies and procedures set out in this document are intended for the guidance of government personnel and to inform the public. They are not intended, and cannot be relied upon, to create any rights, substantive or procedural, enforceable by any party in litigation with the United States.

Dated: November 13, 1991.

Scott C. Fulton,

Acting Assistant Administrator for Enforcement.

[FR Doc. 91-29606 Filed 12-11-91; 8:45 am]

BILLING CODE 6560-50-M

[9] The presumption is derived from the determination, which will already have been made by the sentencing court, that the convicted person's criminal conduct justifies a period of supervision and oversight by the court, i.e., probation.

[FRL-4040-5]

Public Water Supply Supervision Program Revision for the State of Florida

AGENCY: Environmental Protection Agency.

ACTION: Notice.

SUMMARY: Notice is hereby given that the State of Florida is revising its approved State Public Water Supply Supervision Primacy Program. Florida has adopted drinking water regulations for treatment of volatile organic chemicals and issuance of public notification. EPA has determined that these sets of State program revisions are no less stringent than the corresponding federal regulations. Therefore, EPA has tentatively decided to approve these State program revisions.

All interested parties may request a public hearing. A request for a public hearing must be submitted by January 13, 1992 to the Regional Administrator at the address shown below. Frivolous or insubstantial requests for a hearing may be denied by the Regional Administrator. However, if a substantial request for a public hearing is made by January 13, 1992, a public hearing will be held. If no timely and appropriate request for a hearing is received and the Regional Administrator does not elect to hold a hearing on his own motion, this determination shall become final and effective on January 13, 1992.

Any request for a public hearing shall include the following: (1) The name, address, and telephone number of the individual, organization, or other entity requesting a hearing; (2) A brief statement of the requesting person's interest in the Regional Administrator's determination and a brief statement of the information that the requesting person intends to submit at such hearing; (3) The signature of the individual making the request, or, if the request is made on behalf of an organization or other entity, the signature of a responsible official of the organization or other entity.

ADDRESSES: All documents relating to this determination are available for inspection between the hours of 8 a.m. and 4:30 p.m., Monday through Friday, at the following offices:

Drinking Water Section, Florida Department of Environmental Regulation, Twin Towers Office Building, 2600 Blair Stone Road, Tallahassee, Florida 32399-2400.

Environmental Protection Agency, Region IV, 345 Courtland Street, NE., Atlanta, Georgia 30365.

FOR FURTHER INFORMATION CONTACT: Wayne Aronson, EPA, Region IV Drinking Water Section at the Atlanta address given above (telephone (404) 347-2913, (FTS) 257-2913.

(Sec. 1413 of the Safe Drinking Water Act, as amended (1986), and 40 CFR 142.10 of the National Primary Drinking Water Regulations)

Patrick M. Tobin,

Acting Regional Administrator EPA, Region IV.

[FR Doc. 91-29739 Filed 12-11-91; 8:45 am]

BILLING CODE 6560-50-M

[FRL-4040-6]

Public Water Supply Supervision Program Revision for the State of Kentucky

AGENCY: Environmental Protection Agency.

ACTION: Notice.

SUMMARY: Notice is hereby given that the State of Kentucky is revising its approved State Public Water Supply Supervision Primacy Program. Kentucky has adopted drinking water regulations for treatment of volatile organic chemicals and issuance of public notification. EPA has determined that these sets of State program revisions are no less stringent than the corresponding federal regulations. Therefore, EPA has

tentatively decided to approve these State program revisions.

All interested parties may request a public hearing. A request for a public hearing must be submitted by January 13, 1992 to the Regional Administrator at the address shown below. Frivolous or insubstantial requests for a hearing may be denied by the Regional Administrator. However, if a substantial request for a public hearing is made by January 13, 1992, a public hearing will be held. If no timely and appropriate request for a hearing is received and the Regional Administrator does not elect to hold a hearing on his own motion, this determination shall become final and effective thirty (30) days after publication in the **Federal Register**.

Any request for a public hearing shall include the following: (1) The name, address, and telephone number of the individual, organization, or other entity requesting a hearing; (2) A brief statement of the requesting person's interest in the Regional Administrator's determination and a brief statement of the information that the requesting person intends to submit at such hearing; (3) The signature of the individual making the request, or, if the request is made on behalf of an organization or other entity, the signature of a responsible official of the organization or other entity.

ADDRESSES: All documents relating to this determination are available for inspection between the hours of 8 a.m. and 4:30 p.m., Monday through Friday, at the following offices:

Kentucky Natural Resources and Environmental Protection Cabinet, Drinking Water Branch, Fort Boone Plaza, 18 Reilly Road, Frankfort, Kentucky 40601.

Environmental Protection Agency, Region IV, 345 Courtland Street, NE., Atlanta, Georgia 30365.

FOR FURTHER INFORMATION CONTACT: Wayne Aronson, EPA, Region IV Drinking Water Section at the Atlanta address given above (telephone (404) 347-2913, (FTS) 257-2913).

(Sec. 1413 of the Safe Drinking Water Act, as amended (1986), and 40 CFR 142.10 of the National Primary Drinking Water Regulations)

Joe R. Franzmathes,

Acting Regional Administrator, EPA, Region IV.

[FR Doc. 91-29749 Filed 12-11-91; 8:45 am]

BILLING CODE 6560-50-M

[FRL-40-7]

Public Water Supply Supervision Program Revision for the State of Mississippi

AGENCY: Environmental Protection Agency.

ACTION: Notice.

SUMMARY: Notice is hereby given that the State of Mississippi is revising its approved State Public Water Supply Supervision Primacy Program. Mississippi has adopted drinking water regulations for treatment of volatile organic chemicals and issuance of public notification. EPA has determined that these sets of State program revisions are no less stringent than the corresponding federal regulations. Therefore, EPA has tentatively decided to approve these State program revisions.

All interested parties may request a public hearing. A request for a public hearing must be submitted by January 13, 1992 to the Regional Administrator at the address shown below. Frivolous or insubstantial requests for a hearing may be denied by the Regional Administrator. However, if a substantial request for a public hearing is made by January 13, 1992, a public hearing will be held. If no timely and appropriate request for a hearing is received and the Regional Administrator does not elect to hold a hearing on his own motion, this determination shall become final and effective on January 13, 1992.

Any request for a public hearing shall include the following: (1) The name, address, and telephone number of the individual, organization, or other entity requesting a hearing; (2) A brief statement of the requesting person's interest in the Regional Administrator's determination and a brief statement of the information that the requesting person intends to submit at such hearing; (3) The signature of the individual making the request, or, if the request is made on behalf of an organization or other entity, the signature of a responsible official of the organization or other entity.

ADDRESSES: All documents relating to this determination are available for inspection between the hours of 8 a.m. and 4:30 p.m., Monday through Friday, at the following offices:

Mississippi State Department of Health, 2423 North State Street, Jackson, Mississippi 39215-1700.

Environmental Protection Agency, Region IV, 345 Courtland Street, NE., Atlanta, Georgia 30365.

FOR FURTHER INFORMATION CONTACT: Wayne Aronson, EPA, Region IV Drinking Water Section at the Atlanta address given above (telephone (404) 347-2913, (FTS) 257-2913).

(Sec. 1413 of the Safe Drinking Water Act, as amended (1986), and 40 CFR 142.10 of the National Primary Drinking Water Regulations)

Joe R. Franzmathes,

Acting Regional Administrator EPA, Region IV.

[FR Doc. 91-29740 Filed 12-11-91; 8:45 am]

BILLING CODE 6560-50-M

[FRL-4040-0]

Public Water Supply Supervision Program Revision for the State of Mississippi

AGENCY: Environmental Protection Agency.

ACTION: Notice.

SUMMARY: Notice is hereby given that the State of Mississippi is revising its approved State Public Water Supply Supervision Primacy Program. Mississippi has adopted drinking water regulations for treatment of surface water and the regulation of total coliforms. EPA has determined that these sets of State program revisions are no less stringent than the corresponding federal regulations. Therefore, EPA has tentatively decided to approve these State program revisions.

All interested parties may request a public hearing. A request for a public hearing must be submitted by January 13, 1992 to the Regional Administrator at the address shown below. Frivolous or insubstantial requests for a hearing may be denied by the Regional Administrator. However, if a substantial request for a public hearing is made by January 13, 1992, a public hearing will be held. If no timely and appropriate request for a hearing is received and the Regional Administrator does not elect to hold a hearing on his own motion, this determination shall become final and effective on January 13, 1992.

Any request for a public hearing shall include the following: (1) The name, address, and telephone number of the individual organization, or other entity requesting a hearing; (2) A brief statement of the requesting person's interest in the Regional Administrator's determination and a brief statement of the information that the requesting person intends to submit at such hearing; (3) The signature of the individual making the request, or, if the request is made on behalf of an organization or other entity, the signature of a responsible official of the organization or other entity.

ADDRESSES: All documents relating to this determination are available for inspection between the hours of 8 a.m. and 4:30 p.m., Monday through Friday, at the following offices:

Mississippi State Department of Health, 2423 North State Street, Jackson, Mississippi 39215–1700.

Environmental Protection Agency, Region IV, 345 Courtland Street, NE., Atlanta, Georgia 30365.

FOR FURTHER INFORMATION CONTACT: Wayne Aronson, EPA, Region IV Drinking Water Section at the Atlanta address given above (telephone (404) 347–2913, (FTS) 257–2913).

(Sec. 1413 of the Safe Drinking Water Act, as amended (1986), and 40 CFR 142.10 of the National Primary Drinking Water Regulations)

Joe R. Franzmathes,

Acting Regional Administrator EPA, Region IV.

[FR Doc. 91–29741 Filed 12–11–91; 8:45 am]

BILLING CODE 6560–50–M

[FRL–4040–4]

Public Water Supply Supervision Program Revision for the State of Tennessee

AGENCY: Environmental Protection Agency.

ACTION: Notice.

SUMMARY: Notice is hereby given that the State of Tennessee is revising its approved State Public Water Supply Supervision Primacy Program. Tennessee has adopted drinking water regulations for treatment of volatile organic chemicals and issuance of public notification. EPA has determined that these sets of State program revisions are no less stringent than the corresponding federal regulations. Therefore, EPA has tentatively decided to conditionally approve these State program revisions. The State has committed to amend the Tennessee rules at the first available opportunity by including in 1200–5–1–.28 (4) the requirements for averaging the results of confirmation samples with the results of the original sample as set forth in 40 CFR 141.24(g)5. This requirement is currently implemented by the State and this revision to the regulations will serve to clarify the intent of the State rules.

All interested parties may request a public hearing. A request for a public hearing must be submitted by January 13, 1992 to the Regional Administrator at the address shown below. Frivolous or insubstantial requests for a hearing may be denied by the Regional Administrator. However, if a substantial request for a public hearing is made by January 13, 1992, a public hearing will be held. If no timely and appropriate request for a hearing is received and the Regional Administrator does not elect to hold a hearing on his own motion, this determination shall become final and effective on January 13, 1992.

Any request for a public hearing shall include the following: (1) The name, address, and telephone number of the individual, organization, or other entity requesting a hearing; (2) A brief statement of the requesting person's interest in the Regional Administrator's determination and a brief statement of the information that the requesting person intends to submit at such hearing; (3) The signature of the individual making the request, or, if the request is made on behalf of an organization or other entity, the signature of a responsible official of the organization or other entity.

ADDRESSES: All documents relating to this determination are available for inspection between the hours of 8 a.m. and 4:30 p.m., Monday through Friday, at the following offices:

Tennessee Department of Health and Environment, T.E.R.R.A. Building, 150 Ninth Avenue North, Nashville, Tennessee 37219–5404.

Environmental Protection Agency, Region IV, 345 Courtland Street, NE., Atlanta, Georgia 30365.

FOR FURTHER INFORMATION CONTACT: Wayne Aronson, EPA, Regional IV Drinking Water Section at the Atlanta address given above (telephone (404) 347–2913, (FTS) 257–2913).

(Sec. 1413 of the Safe Drinking Water Act, as amended (1986), and 40 CFR 142.10 of the National Primary Drinking Water Regulations)

Joe R. Franzmathes,

Acting Regional Administrator EPA, Region IV.

[FR Doc. 91–29742 Filed 12–11–91; 8:45 am]

BILLING CODE 6560–50–M

[FRL 4039–7]

Notice of Open Meeting on January 21–23, 1992: State and Local Programs Committee; National Advisory Council for Environmental Policy and Technology (NACEPT)

Under Public Law 92463 (The Federal Advisory Committee Act) the U.S. Environmental Protection Agency (EPA) gives notice of a meeting of the State and Local Programs Committee. The Committee is a standing committee of the National Advisory Council for Environmental Policy and Technology (NACEPT), an advisory committee to the Administrator of the EPA. The State and Local Programs Committee and NACEPT are seeking ways to enhance the effectiveness of the environmental management system in the United States and makes recommendations to the Administrator based on NACEPT's fact-finding and deliberative activities.

The Committee is now examining issues and opportunities for building State and local pollution prevention efforts as an effective approach to environmental protection and economic sustainability. The Committee's meeting on January 21–23 will be in the form of a workshop, entitled "Building State and Local Pollution Prevention Programs." Invited experts will discuss such matters as roles of the various governmental levels and agencies in fostering pollution prevention, making the transition to a prevention approach within existing environmental regulatory and organizational structures, sources of funding, linking economic and environmental interests, assessing progress, and transferring successful approaches.

The meeting, which is open to observation by the public, will take place at the Westfields International Conference Center, 14750 Conference Center Drive, Chantilly, Virginia. Meeting hours are: January 21—2 p.m. to 5 p.m.; January 22—8:30 a.m. to 5 p.m.; January 23—8:30 a.m. to noon. Members of the public wishing to provide written comments on issues associated with building State and local pollution prevention programs should submit them for consideration by the Committee by no later than February 1, 1992. Please send comments to Donna A. Fletcher (A101–F6), U.S. Environmental Protection Agency, Washington, DC 20460.

More information about the workshop is available from Donna Fletcher by written request at the address above or by FAX (202/260–6883). Ms. Fletcher's telephone number is 202–260–6883.

Dated: November 25, 1991.

Abby J. Pirnie,

NACEPT Designated Federal Official.

[FR Doc. 91–29737 Filed 12–11–91; 8:45 am]

BILLING CODE 6560–50–M

FEDERAL MARITIME COMMISSION

Agreement(s) Filed: Crowley Caribbean Transport, Inc. et al.

The Federal Maritime Commission hereby gives notice of the filing of the following agreement(s) pursuant to section 5 of the Shipping Act of 1984.

Interested parties may inspect and obtain a copy of each agreement at the Washington, DC Office of the Federal Maritime Commission, 1100 L Street, NW, room 10325. Interested parties may submit comments on each agreement to the Secretary, Federal Maritime Commission, Washington, DC 20573, within 10 days after the date of the **Federal Register** in which this notice appears. The requirements for comments are found in § 572.603 of title 46 of the code of Federal Regulations. Interested persons should consult this section before communicating with the Commission regarding a pending agreement.

Agreement No.: 202–010987–014.

Title: United States Central America Liner Association.

Parties:

Crowley Caribbean Transport, Inc.,
Sea-Land Service, Inc.,
Seaboard Marine Ltd.,
Crowley Trailer Marine Transport, Corp.,
Empresa Naviera Santa.

Synopsis: The proposed amendment would modify the Agreement by permitting the parties to charter space to each other and with the members of the Central America Discussion Agreement (Agreement No. 203–011075). It would also permit the parties to jointly establish sailing schedules, port rotations, limit sailings and jointly advertise each other's vessels or vessels owned or operated by members of the Central America Discussion Agreement.

Agreement No.: 203–011075–018.

Title: Central America Discussion Agreement.

Parties:

Association Party
United States/Central America Liner Association.
Independent Carrier Parties
Nexos Line,
Nordana Line, Inc.,
Concorde Shipping, Inc.,
Tropical Shipping and Construction Co. Ltd.,
Central America Shippers, Inc.,
Great White Fleet, Ltd.,
Thompson Shipping Co., Ltd.,
Naviera Consolidada, S.A.,
Norwegian American Enterprises, Inc.,
King Ocean Central America, S.A.,
Network Shipping Ltd.

Synopsis: The proposed amendment would delete Norwegian American Enterprises, Inc. as an Independent Carrier Party to the Agreement. It would also modify the Agreement by permitting the parties to charter space to each other and with members of the United States/Central America Liner Association (Agreement No. 202–010987). It would also permit the parties to jointly establish sailing schedules, port rotations, limit sailings and jointly advertise each other's vessels or vessels owned or operated by members of the United States Central America Liner Association.

Dated: December 6, 1991.

By Order of the Federal Maritime Commission.

Joseph C. Polking,

Secretary.

[FR Doc. 91–29655 Filed 12–11–91; 8:45 am]

BILLING CODE 6730–01–M

FEDERAL RESERVE SYSTEM

Camilla Bancshares, Inc., et al.; Formations of; Acquisitions by; and Mergers of Bank Holding Companies

The companies listed in this notice have applied for the Board's approval under section 3 of the Bank Holding Company Act (12 U.S.C. 1842) and § 225.14 of the Board's Regulation Y (12 CFR 225.14) to become a bank holding company or to acquire a bank or bank holding company. The factors that are considered in acting on the applications are set forth in section 3(c) of the Act (12 U.S.C. 1842(c)).

Each application is available for immediate inspection at the Federal Reserve Bank indicated. Once the application has been accepted for processing, it will also be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing to the Reserve Bank or to the offices of the Board of Governors. Any comment on an application that requests a hearing must include a statement of why a written presentation would not suffice in lieu of a hearing, identifying specifically any questions of fact that are in dispute and summarizing the evidence that would be presented at a hearing.

Unless otherwise noted, comments regarding each of these applications must be received not later than January 2, 1992.

A. Federal Reserve Bank of Atlanta (Robert E. Heck, Vice President) 104 Marietta Street, NW., Atlanta, Georgia 30303:

1. Camilla Bancshares, Inc., Camilla, Georgia; to become a bank holding company by acquiring 100 percent of the voting shares of Bank of Camilla, Camilla, Georgia.

B. Federal Reserve Bank of Kansas City (John E. Yorke, Senior Vice President) 925 Grand Avenue, Kansas City, Missouri 64198:

1. Aurora First National Corporation, Aurora, Nebraska; to merge with Wood River Financial Services, Inc., Wood River, Nebraska, and thereby indirectly acquire Bank of Wood River, Wood River, Nebraska; and Stromsburg Financial Services, Inc., Stromsburg, Nebraska, and thereby indirectly acquire Stromsburg Bank, Stromsburg, Nebraska.

Board of Governors of the Federal Reserve System, December 6, 1991.

Jennifer J. Johnson,

Associate Secretary of the Board.

[FR Doc. 91-29674 Filed 12-11-91; 8:45 am]

BILLING CODE 6210-01-F

Franklin Bank and Trust Company Employee Stock Ownership Plan/Trust, et al.; Change in Bank Control Notices; Acquisitions of Shares of Banks or Bank Holding Companies

The notificants listed below have applied under the Change in Bank Control Act (12 U.S.C. 1817(j)) and § 225.41 of the Board's Regulation Y (12 CFR 225.41) to acquire a bank or bank holding company. The factors that are considered in acting on the notices are set forth in paragraph 7 of the Act (12 U.S.C. 1817(j)(7)).

The notices are available for immediate inspection at the Federal Reserve Bank indicated. Once the notices have been accepted for processing, they will also be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing to the Reserve Bank indicated for that notice or to the offices of the Board of Governors. Comments must be received not later than January 2, 1992.

A. Federal Reserve Bank of St. Louis (Randall C. Sumner, Vice President) 411 Locust Street, St. Louis, Missouri 63166:

1. Franklin Bank and Trust Company Employee Stock Ownership Plan/Trust, Franklin, Kentucky; to acquire an additional 2.48 percent of the voting shares of Franklin Bancorp, Inc., Franklin, Kentucky, for a total of 11.35 percent, and thereby indirectly acquire Franklin Bank and Trust Company, Franklin, Kentucky.

B. Federal Reserve Bank of Kansas City (John E. Yorke, Senior Vice President) 925 Grand Avenue, Kansas City, Missouri 64198:

1. John M. Floyd, Houston, Texas; John M. Floyd and Associates, Houston, Texas; and IPC Service Corporation, Denver, Colorado; to acquire 100 percent of the voting shares of Arvada 1st Industrial Bank, Arvada, Colorado.

2. Christian N. Hoffman, III Trust, to acquire 1.34 percent; William C. Hoffman Trust, to acquire 1.34 percent; Thomas J. Hoffman Trust, to acquire 1.34 percent; Christian N. Hoffman, III GST Trust, to acquire 7.17 percent; William C. Hoffman GST Trust, to acquire 7.17 percent; Thomas J. Hoffman GST Trust, to acquire 7.17 percent; Christian N. Hoffman, III, individually and as trustee of the each of the above trusts, Salina, Kansas, to acquire an additional 25.53 percent for a total of 34.97 percent; William C. Hoffman, individually and as trustee of each of the above trusts, Salina, Kansas, to acquire an additional 25.53 percent for a total of 32.07 percent; Thomas J. Hoffman, individually and as trustee of each of the above trusts, Lawrence, Kansas, to acquire an additional 25.53 percent for a total of 30.04 percent of the voting shares of NBA Bankshares, Inc., Salina, Kansas, and thereby indirectly acquire The National Bank of America at Salina, Salina, Kansas.

Board of Governors of the Federal Reserve System, December 6, 1991.

Jennifer J. Johnson,

Associate Secretary of the Board.

[FR Doc. 91-29675 Filed 12-11-91; 8:45 am]

BILLING CODE 6210-01-F

National City Corporation; Application to Engage de novo in Permissible Nonbanking Activities

The company listed in this notice has filed an application under § 225.23(a)(1) of the Board's Regulation Y (12 CFR 225.23(a)(1)) for the Board's approval under section 4(c)(8) of the Bank Holding Company Act (12 U.S.C. 1843(c)(8)) and § 225.21(a) of Regulation Y (12 CFR 225.21(a)) to commence or to engage *de novo*, either directly or through a subsidiary, in a nonbanking activity that the Board has determined to be closely related to banking and permissible for bank holding companies. Unless otherwise noted, such activities will be conducted throughout the United States.

The application is available for immediate inspection at the Federal Reserve Bank indicated. Once the application has been accepted for processing, it will also be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing on the question whether consummation of the proposal can "reasonably be expected to produce benefits to the public, such as greater convenience, increased competition, or gains in efficiency, that outweigh possible adverse effects, such as undue concentration of resources, decreased or unfair competition, conflicts of interests, or unsound banking practices." Any request for a hearing on this question must be accompanied by a statement of the reasons a written presentation would not suffice in lieu of a hearing, identifying specifically any questions of fact that are in dispute, summarizing the evidence that would be presented at a hearing, and indicating how the party commenting would be aggrieved by approval of the proposal.

Comments regarding the application must be received at the Reserve Bank indicated or the offices of the Board of Governors not later than January 2, 1992.

A. Federal Reserve Bank of Cleveland (John J. Wixted, Jr., Vice President) 1455 East Sixth Street, Cleveland, Ohio 44101:

1. National City Corporation, Cleveland, Ohio; to engage *de novo* through National City Venture Corporation's, wholly owned subsidiary of National City Corporation, in a joint venture with Reserve Capital Group Limited Partnership, Cleveland, Ohio, in private placement activities pursuant to section 4(c)(8) of the BHC Act (*Bankers Trust New York Corporation*, 25 Federal Reserve Bulletin 829 (1989) and J.P. Morgan & Company Incorporated, 76 Federal Reserve Bulletin 26 (1990)) and acquisition/divestiture advisory services pursuant to 4(c)(8) of the BHC Act (*Suntrust Banks, Inc.*, 74 Federal Reserve Bulletin 256 (1988)) and arranging commercial real estate equity financing pursuant to § 225.25(b)(14); real estate and personal property appraising pursuant to § 225.25(b)(13); and management consulting to depository institutions pursuant to § 225.25(b)(11) of the Board's Regulation Y.

Board of Governors of the Federal Reserve System, December 6, 1991.

Jennifer J. Johnson,

Associate Secretary of the Board.

[FR Doc. 91-29676 Filed 12-11-91; 8:45 am]

BILLING CODE 6210-01-F

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

Advisory Committees; Meetings

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: This notice announces forthcoming meetings of public advisory committees of the Food and Drug Administration (FDA). This notice also summarizes the procedures for the meetings and methods by which interested persons may participate in open public hearings before FDA's advisory committees.

Meetings: The following advisory committee meetings are announced:

Dermatologic Drugs Advisory Committee

Date, Time, and Place

January 23 and 24, 1992, 8:30 a.m., Conference Rms. D and E, Parklawn Bldg., 5600 Fishers Lane, Rockville, MD.

Type of Meeting and Contact Person

Open public hearing, January 23, 1992, 8:30 a.m. to 9 a.m., unless public participation does not last that long; open committee discussion, 9 a.m. to 4:30 p.m.; open public hearing, January 24, 1992, 8:30 a.m. to 9 a.m., unless public participation does not last that long; open committee discussion, 9 a.m. to 4:30 p.m.; Elaine Osier, Center for Drug Evaluation and Research (HFD-9), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301-443-4695.

General Function of the Committee

The committee reviews and evaluates data on the safety and effectiveness of marketed and investigational human drugs for use in the treatment of dermatologic diseases.

Agenda—Open Public Hearing

Interested persons may present data, information, or views, orally or in writing, on issues pending before the committee. Those desiring to make formal presentations should notify the contact person before January 10, 1992, and submit a brief statement of the general nature of the evidence or arguments they wish to present, the names and addresses of proposed participants, and an indication of the approximate time required to make their comments.

Open Committee Discussion

On January 23, 1992, the committee will discuss: (1) General efficacy parameters relative to the assessment of repair of photodamaged skin and (2) new drug application (NDA 19963) (tretinoin emollient cream, 0.05 percent) for treatment of photodamaged skin. On January 24, 1992, the committee will discuss continued over-the-counter (OTC) marketing availability of benzoyl peroxide for the treatment of acne while further testing of the ingredient's safety is being conducted. The committee will also consider the National Consumer League's request for warning

information in the labeling of these products.

The committee discussion and conclusion regarding benzoyl peroxide may be considered by the agency in its preparation of an amendment of the final monograph for OTC topical acne drug products. An amendment to the tentative final monograph for OTC topical acne drug products, in which benzoyl peroxide was reclassified from Category I (recognized as safe and effective) to Category III (more data needed), was published in the Federal Register of August 7, 1991 (56 FR 37622). The final monograph for OTC topical acne drug products, covering all ingredients except benzoyl peroxide, was published in the Federal Register of August 16, 1991 (56 FR 41008).

Oncologic Drugs Advisory Committee

Date, Time, and Place

January 31, 1992, 8 a.m., Conference Rms. D and E, Parklawn Bldg., 5600 Fishers Lane, Rockville, MD.

Type of Meeting and Contact Person

Open committee discussion, 8 a.m. to 4 p.m.; open public hearing, 4 p.m. to 5 p.m., unless public participation does not last that long; Adele S. Seifried, Center for Drug Evaluation and Research (HFD–9), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301–443–4695.

General Function of the Committee

The committee reviews and evaluates data on the safety and effectiveness of marketed and investigational human drugs for use in the treatment of cancer.

Agenda—Open Public Hearing

Interested persons may present data, information, or views, orally or in writing, on issues pending before the committee. Those desiring to make formal presentations should notify the contact person before January 21, 1992, and submit a brief statement of the general nature of the evidence or arguments they wish to present, the names and addresses of proposed participants, and an indication of the approximate time required to make their comments.

Open Committee Discussion

On January 31, 1992, the committee will discuss: (1) NDA 20207, Alkeran® (melphalan) for injection, Burroughs Wellcome, for hyperthermic isolated limb perfusion as an adjunct to surgery for locally advanced malignant melanoma of the extremity and for palliative treatment of multiple myeloma; and (2) NDA 20221, Ethyol® (amifostine) injection, U.S. Bioscience, Inc., as a chemoprotective agent against the serious toxicities associated with intensive regimens of platinum and alkylating agent chemotherapy.

FDA public advisory committee meetings may have as many as four separate portions: (1) An open public hearing, (2) an open committee discussion, (3) a closed presentation of data, and (4) a closed committee deliberation. Every advisory committee meeting shall have an open public hearing portion. Whether or not it also includes any of the other three portions will depend upon the specific meeting involved. There are no closed portions for the meetings announced in this notice. The dates and times reserved for the open portions of each committee meeting are listed above.

The open public hearing portion of each meeting shall be at least 1 hour long unless public participation does not last that long. It is emphasized, however, that the 1 hour time limit for an open public hearing represents a minimum rather than a maximum time for public participation, and an open public hearing may last for whatever longer period the committee chairperson determines will facilitate the committee's work.

Public hearings are subject to FDA's guideline (subpart C of 21 CFR part 10) concerning the policy and procedures for electronic media coverage of FDA's public administrative proceedings, including hearings before public advisory committees under 21 CFR part 14. Under 21 CFR 10.205, representatives of the electronic media may be permitted, subject to certain limitations, to videotape, film, or otherwise record FDA's public administrative proceedings, including presentations by participants.

Meetings of advisory committees shall be conducted, insofar as is practical, in accordance with the agenda published in this Federal Register notice. Changes in the agenda will be announced at the beginning of the open portion of a meeting.

Any interested person who wishes to be assured of the right to make an oral presentation at the open public hearing portion of a meeting shall inform the contact person listed above, either orally or in writing, prior to the meeting. Any person attending the hearing who does not in advance of the meeting request an opportunity to speak will be allowed to make an oral presentation at the hearing's conclusion, if time permits, at the chairperson's discretion.

The agenda, the questions to be addressed by the committee, and a current list of committee members will be available at the meeting location on the day of the meeting.

Transcripts of the open portion of the meeting will be available from the Freedom of Information Office (HFI–35), Food and Drug Administration, rm. 12A–16, 5600 Fishers Lane, Rockville, MD 20857, approximately 15 working days after the meeting, at a cost of 10 cents per page. The transcript may be viewed at the Dockets Management Branch (HFA–305), Food and Drug Administration, rm. 1–23, 12420 Parklawn Dr., Rockville, MD 20857, approximately 15 working days after the meeting, between the hours of 9 a.m. and 4 p.m., Monday through Friday. Summary minutes of the open portion of the meeting will be available from the Freedom of Information Office (address above) beginning approximately 90 days after the meeting.

This notice is issued under section 10(a) (1) and (2) of the Federal Advisory Committee Act (5 U.S.C. app. 2), and FDA's regulations (21 CFR part 14) on advisory committees.

Dated: December 6, 1991.

Michael R. Taylor,

Deputy Commissioner for Policy.

[FR Doc. 91–29679 Filed 12–11–91; 8:45 am]

BILLING CODE 4160–01–M

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

[Docket No. N–91–3358]

Office of the Assistant Secretary for Administration; Privacy Act of 1974 Notice of a Matching Program: Matching Tenant Data in Assisted Housing Programs

AGENCY: Office of the Assistant Secretary for Administration, HUD.

ACTION: Notice of Matching Program—HUD/Public Housing Authorities and Subsidized Multifamily Projects.

SUMMARY: The Computer Matching and Privacy Protection Act of 1988 as amended, Public Law 100–503 and the Office of Management and Budget's (OMB's) Final Guidance Interpreting the Provisions of Public Law 100–503, the Computer Matching and Privacy Protection Act of 1988 (54 FR 25818, June 19, 1989) requires publication of notices concerning computer matching programs. OMB's Final Guidance augments the OMB Guidelines on the Administration of the Privacy Act of 1974, issued July 1, 1975, and supplemented on November 21, 1975, and appendix I to OMB Circular No. A–130, published on December 24, 1985

(see 50 FR 52738). The Department published a Notice of Matching Program—Matching Data in Assisted Housing Programs on February 9, 1990 (see 55 FR 4717). That notice stated that HUD's Office of Inspector General (OIG) would conduct or directly supervise computer matches of tenant records at Public Housing Authorities (PHAs) and HUD-subsidized multifamily projects with various types of income data maintained by States and by the Office of Personnel Management, United States Department of Defense, and the United States Postal Service. The notice also described a matching program to include the computer records from the Social Security Administration's Master Files of Social Security Number Holders, referenced in the February 9, 1990 notice as the Enumeration Verification System. In addition, the notice described the OIG's role in "coordinating" with PHAs to do matching. The prior matching notice was effective for matches starting in January 1990 through June 1991.

This matching notice re-publishes the provisions contained in the prior notice and sets forth new starting and ending dates for the matching program. Further, the new notice: (1) Lists states where the OIG plans to conduct matching during the next three (3) years; (2) adds the OIG as an agency for possible referral on tenant cases for investigation;, and (3) provides for the matching of SSNs of deceased individuals to validate tenant SSNs.

The matching program will be performed to detect unwarranted benefit payments under the National Housing Act, 12 U.S.C. 1701–1750g, the United States Housing Act of 1937, 42 U.S.C. 1437o, and section 101 of the Housing and Community Development Act of 1965, 12 U.S.C. 1701s. Such unwarranted benefits may be paid when family income is unreported or underreported, causing rental assistance payments to be set unduly low, and housing subsidies to be set correspondingly too high.

EFFECTIVE DATE: Data exchange will begin in December 1991, and unless comments are received which result in a contrary determination, will be accomplished by the end of December 1994.

FOR PRIVACY ACT INFORMATION CONTACT: Donna L. Eden, Departmental Privacy Act Officer, telephone number (202) 708–2374. (This is not a toll-free telephone number.)

FOR FURTHER INFORMATION FROM RECIPIENT AGENCY CONTACT: Ms. Jacqulyn Howard, Office of Inspection General, room 8254, Department of Housing and Urban Development, 451 Seventh Street, SW., Washington, DC 20410, telephone (202) 708–0006. (This is not a toll-free telephone number.)

Reporting

In accordance with Public Law 100–503, the Computer Matching and Privacy Protection Act of 1988, as amended, and Office of Management and Budget Bulletin 89–22, "Instructions on Reporting Computer Matching Programs to the Office of Management and Budget (OMB), Congress and the Public"; copies of this Notice and report, in duplicate, are being provided to the Committee on Government Operations of the House of Representatives, the Committee on Governmental Affairs of the Senate and the Office of Management and Budget.

Authority: This matching program is being conducted pursuant to section 4(a) of the Inspector General Act of 1978, Public Law 95–452, 5 U.S.C. app. 4(a); section 904 of the Stewart B. McKinney Homeless Assistance Amendments Act of 1988, Public Law 100–628; section 165 of the Housing and Community Development Act of 1987, Public Law 100–242; the National Housing Act, 12 U.S.C. 1701–1750g; the United States Housing Act of 1937, 42 U.S.C. 1437–1437o; and section 101 of the Housing and Urban Development Act of 1965, 12 U.S.C. 1701s.

The Inspector General Act authorizes OIG to undertake programs to detect and prevent fraud and abuse in all HUD programs. The McKinney Amendments of 1988 authorize HUD to request wage and claim information from the state agency responsible for the administration of the state unemployment law in order to undertake computer matching in HUD's rental assistance programs. The Housing and Community Development Act of 1987 authorizes HUD to require applicants and participants (as well as members of their households six (6) years of age and older) in HUD-administered programs involving rental assistance to disclose to HUD their Social Security Numbers (SSNs) as a condition of initial or continuing eligibility for participation.

Program Description

The matching program is intended to be a continuing program, carried out either at selected PHAs or HUD-subsidized multifamily projects, and on a state-wide basis for all interested PHAs or subsidized multifamily projects within the selected states. The OIG plans to conduct computer matches of PHAs or HUD-subsidized multifamily projects in California, the District of Columbia, Illinois, Maryland, Missouri, Ohio, Oregon, Pennsylvania, and Virginia.

Records to be Matched

The OIG will conduct, supervise, or coordinate the performance of the computer matching using tenant SSNs and additional identifiers (such as surname or date of birth) in tenant records: (1) In HUD's Multifamily Tenant Characteristics System (HUD–H–11) based on data submitted by PHAs and HUD subsidized multifamily project owners; or (2) from on-site tenant data as it is maintained by the PHAs or owners and management agents. The OIG will also coordinate state-wide income computer matches for PHAs using tenant SSNs and additional identifiers. Data will again come from either: (1) HUD's Multifamily Tenant Characteristics System; or (2) on-site tenant data maintained by PHAs. In either case, these tenant records will be matched against the states' machine-readable files of quarterly wage data and unemployment insurance benefit data to determine whether tenants have unreported or underreported income. State wage agencies or other Federal agencies may, in some instances, perform the actual matching in accordance with a written agreement with HUD. Data on the unverified matches will either be provided to the OIG for further follow-up work, as discussed below; or in the case of state-wide PHA income matches, data on the unverified matches will be provided to the individual PHA for further follow-up, as discussed below. In addition, tenant SSNs may be matched to the Office of Personnel Management's General Personnel Records (OPM/GOVT–1), the Civil Service Retirement and Insurance Records System (OPM/Central–1), the Department of Defense's Defense Manpower Data Center Base (S322.10.DLA–LZ), or the United States Postal Service's Finance Record-Payroll (USPS050.020) to facilitate the identification of unreported or underreported income. The tenant data may be matched to the Social Security Administration's Master Files of Social Security Number Holders, HHS/SSA/OSR (09–60–0058) and Death Master Files for the purpose of validating SSNs contained in tenant records. These records will also be used to validate SSNs for all applicants, tenants, and household members six (6) years of age and over to identify noncompliance with program eligibility requirements. The OIG will compare tenant SSNs, provided by PHAs and HUD-subsidized multifamily housing project owners, to disclose duplicate SSNs and potential duplicate housing assistance.

The OIG will also conduct follow-up work at the PHAs and HUD-subsidized multifamily projects on selected computer matches. This work will include verification of income sources that were not reported to the PHA or subsidized multifamily project owner,

interviews with individuals knowledgeable about the case(s), and preparation of case files for administrative remedy actions or prosecution as appropriate.

Records created from the computer matching program (case matches and the follow-up data) will be included by the OIG in the HUD-DEPT-24 Investigation Files system of records (see 49 FR 10372, March 20,1984). Routine uses of these records in this system are described therein.

HUD, the PHA or owner, as appropriate, will take actions necessary to collect the amount of excess benefits paid on behalf of tenants. In addition, if requested by another Federal agency to provide information on tenants that have underreported income, HUD may supply data on verified cases in accordance with applicable routine uses or other Privacy Act exceptions.

In the case of PHA state-wide computer matches, the individual PHAs will conduct follow-up work at the PHA projects with the OIG coordinating the effort. This work will include: (1) Verification with employers of income sources reported to the PHA or HUD-subsidized multifamily project owner, by sending HUD prepared income confirmations to employers for cases where records indicate unreported or underreported income; (2) analyzing confirmed information; (3) calculating the unreported income and excessive housing assistance received by the family; (4) determining whether the individuals actually had or has access to such income for their own use; and (5) determining the periods when the individual actually had such income. The work will also include verifying discrepancies with SSNs. Upon completion, the PHA may refer cases to local law enforcement entities or the OIG for possible investigation and prosecution either criminally or civilly. For cases not referred to local entities or the OIG, the PHA will initiate administrative actions to resolve cases using guidelines in HUD regulations and handbooks. The PHA may not suspend, terminate, reduce, or make a final denial of any housing assistance to any individual as the result of information produced by this matching program: (1) Unless the individual has received notice from such agency containing a statement of its findings and informing the individual of the opportunity to contest such findings; and (2) until the subsequent expiration of the notice period provided in applicable handbooks or regulations of the program, or 30 days, whichever is later. Such opportunity to contest may be satisfied by notice, hearing and appeal rights found in the applicable handbooks and regulations of the program.

During the follow-up stages of these PHA state-wide computer matches, the PHAs will submit formal reports on the status and disposition of case matches on a semiannual basis. These reports will be used by HUD for determining the cost effectiveness of the matching program and reporting computer matching results to the Congress.

Objectives to be Met by the Matching Program

The matching program will be performed to identify tenants receiving excess housing assistance resulting from unreported or underreported family income. The various HUD assisted housing programs available through PHAs or subsidized multifamily projects require that, in order to be admitted, applicants must meet certain income and other eligibility requirements. In addition, tenants are required to report the amount and sources of their income on at least an annual basis. To the extent families do not report all their income as required, HUD-subsidized multifamily project owners or PHAs may initiate investigative, administrative, or legal actions against tenants suspected of false reporting or failing to report their incomes.

The matching of tenant SSNs to SSNs of deceased individuals will aid in identifying families who have received excessive housing assistance by claiming benefits for deceased individuals. Matching tenant SSNs to the Social Security Administration's Master Files of Social Security Number Holders and the Death Master Files will allow the OIG to: (1) Identify individuals who have reported invalid SSNs, and (2) notify PHAs and subsidized multifamily projects owners of invalid SSNs so that they may request that tenants take actions to obtain correct SSNs.

Period of the Match

The computer matching agreements for the planned matches will terminate when the purpose of the computer matching program is accomplished or 18 months from the date the agreement is signed, whichever comes first. Should the purpose not be accomplished within 18 months, the agreement may be extended for one 12-month period, with the mutual agreement of all involved parties, if within three months of the expiration date, all Data Integrity Boards review the agreement and find that the program will be conducted without change, find a continued favorable examination of benefit/cost results, and all parties certify that the program has been conducted in compliance with the agreement. The agreement may be terminated, prior to accomplishment of the computer matching purpose or 18 months from the date the agreement is signed (whichever comes first), by the mutual agreement of all involved parties with 30 days written notice.

Issued at Washington, DC, December 3, 1991.

Jim E. Tarro,

Assistant Secretary for Administration.

[FR Doc. 91-29631 Filed 12-11-91; 8:45 am]

BILLING CODE 4210-01-M

Office of Administration

[Docket No. N-91-3357]

Submission of Proposed Information Collections to OMB

AGENCY: Office of Administration, HUD.

ACTION: Notices.

SUMMARY: The proposed information collection requirements described below have been submitted to the Office of Management and Budget (OMB) for review, as required by the Paperwork Reduction Act. The Department is soliciting public comment on the subject proposals.

ADDRESSES: Interested persons are invited to submit comment regarding these proposals. Comments should refer to the proposal by name and should be sent to: Jennifer Main, OMB Desk Officer, Office of Management and Budget, New Executive Office Building, Washington, DC 20503.

FOR FURTHER INFORMATION CONTACT: David S. Cristy, Reports Management Officer, Department of Housing and Urban Development, 451 7th Street, Southwest, Washington, DC 20410, telephone (202) 708-0050. This is not a toll-free number. Copies of the proposed forms and other available documents submitted to OMB may be obtained from Mr. Cristy.

SUPPLEMENTARY INFORMATION: The Department has submitted the proposals for the collections of information, as described below, to OMB for review, as required by the Paperwork Reduction Act (44 U.S.C. chapter 35).

The Notices list the following information: (1) The title of the information collection proposal; (2) the office of the agency to collect the information; (3) the description of the need for the information and its proposed use; (4) the agency form number, if applicable; (5) what members

of the public will be affected by the proposal; (6) how frequently information submissions will be required; (7) an estimate of the total number of hours needed to prepare the information submission including number of respondents, frequency of response, and hours of response; (8) whether the proposal is new or an extension, reinstatement, or revision of an information collection requirement; and (9) the names and telephone numbers of an agency official familiar with the proposal and of the OMB Desk Officer for the Department.

Authority: Section 3507 of the Paperwork Reduction Act, 44 U.S.C. 3507; section 7(d) of the Department of Housing and Urban Development Act, 42 U.S.C. 3535(d).

Dated: November 21, 1991.

John T. Murphy,

Director, Information Resources Management Policy and Management Division.

Notice of Submission of Proposed Information Collection to OMB

Proposal: General HOME Regulations.

Office: Office of the Secretary.

Description of the Need for the Information and its Proposed Use: This interim rule provides the implementing regulations for the HOME program authorized by title II of the Cranston-Gonzalez National Housing Act of 1990.

Form Number: HUD–40094, 40095, 40096, 40097, 40098, 40099, and 40100.

Respondents: State or Local Governments and non-profit institutions.

Frequency of Submission: Annually and on occasion.

Reporting Burden:

	Number of Respondents	×	Frequency of Response	×	Hours per Response	=	Burden Hours
Information Collection	810		50		.8727		35,345
Recordkeeping	810		1		62.1419		50,335

Total Estimated Burden Hours: 85,680.

Status: Revision.

Contact: Frances Bush, HUD, (202) 708–1296, Jennifer Main, OMB, (202) 395–6880.

Dated: November 21, 1991.

Notice of Submission of Proposed Information Collection to OMB

Proposal: Manufactured Home Construction and Safety Standards Act.

Office: Housing.

Description of the Need for the Information and its Proposed Use: This information is needed to support enforcement of the National Manufactured Home Construction and Safety Act of 1974.

Form Number: None.

Respondents: State or Local Governments.

Frequency of Submission: Monthly.

Reporting Burden:

	Number of Respondents	×	Frequency of Response	×	Hours per Response	=	Burden Hours
Consumer Comp.	550		12		.13		858
Plant Mont./Unit files	1,150		12		.13		1,794
Site Inspection	183		12		.13		286
Query Data	35		12		.25		105

Total Estimated Burden Hours: 3,043.

Status: New.

Contact: Jeannie Magee, HUD, (202) 708–0584, Jennifer Main, OMB, (202) 395–6880.

Dated: November 21, 1991.

[FR Doc. 91–29634 Filed 12–11–91; 8:45 am]

BILLING CODE 4210–01–M

Office of the Assistant Secretary for Housing—Federal Housing Commissioner; Redelegation of Authority

[Docket No. D–91–973; FR–3084–D–01]

AGENCY: Office of the Assistant Secretary for Housing—Federal Housing Commissioner, Department of Housing and Urban Development.

ACTION: Notice of redelegation of authority.

SUMMARY: This Notice redelegates to the Deputy Assistant Secretary for Multifamily Housing Programs the authority of the Assistant Secretary for Housing—Federal Housing Commissioner and the General Deputy Assistant Secretary for Housing—Deputy Federal Housing Commissioner to execute Interest Enhancement Payments contracts for the payment of monthly interest subsidies to purchasers of mortgages insured under section 221 of the National Housing Act that are sold at mortgage auctions administered under section 221(g)(4)(C) of the National Housing Act.

EFFECTIVE DATE: December 3, 1991.

FOR FURTHER INFORMATION CONTACT: Audrey Hinton, Acting Director, Office of Multifamily House Preservation and Property Disposition, Department of Housing and Urban Development, 451 Seventh Street, SW., room 6176, Washington, DC 20410, (202) 708–0216. (This is not a toll-free number).

SUPPLEMENTARY INFORMATION: Section 221(g)(4) of the National Housing Act, 12 USC 1715*l*(g)(4), in its original form, provided that the holder of a mortgage insured under section 221 of the National Housing Act, that is current at the expiration of 20 years from final endorsement of the mortgage for insurance, may assign the mortgage to HUD in exchange for ten-year debentures bearing interest at the "going Federal rate". Section 336 of the National Affordable Housing Act, (Pub. L. 101–625, approved November 28, 1990) and section 2201 of the Omnibus Budget Reconciliation Act of 1990 (Pub. L. 101–508, approved November 5, 1990), amended section 221(g)(4) to provide that, in lieu of accepting such an assignment, the Secretary shall arrange an auction of the mortgage, to determine the lowest interest rate necessary to accomplish the sale of the beneficial interests of the mortgage. Section 221(g)(4), as amended, further provides that the Secretary shall agree to provide a monthly interest subsidy payment

from the General Insurance Fund to the purchaser under the auction and to any subsequent holders who are HUD-approved mortgagees. The monthly subsidy would be in the amount of the difference between the interest due on the unpaid principal balance of the mortgage at the mortgage note rate and the monthly interest due on the unpaid principal balance of the mortgage at the rate bid by the purchaser at the auction.

Under a delegation of authority published in the **Federal Register** on May 22, 1989 at 54 FR 22033, the Secretary of Housing and Urban Development delegated to the Assistant Secretary for Housing—Federal Housing Commissioner and the General Deputy Assistant Secretary for Housing—Deputy Federal Housing Commissioner "the authority of the Secretary of Housing and Urban Development with respect to the multifamily programs and functions," including but not limited to the implementation of title II of the National Housing Act. Since section 221(g)(4) is part of title II of the National Housing Act, the May 22, 1989 delegation is applicable to HUD's actions in implementing section 221(g)(4) with respect to multifamily project mortgages. Pursuant to that delegation, the Assistant Secretary for Housing—Federal Housing Commissioner and the General Deputy Assistant Secretary for Housing—Deputy Federal Housing Commissioner are now redelegating the authority to execute these interest Enhancement Payments contacts under which HUD will pay the monthly interest subsidies described above, to the Deputy Assistant Secretary for Multifamily Housing Programs.

Accordingly, the Assistant Secretary for Housing-Federal Housing Commissioner and the General Deputy Assistant Secretary for Housing—Deputy Federal Housing Commissioner redelegate this authority as follows:

The Deputy Assistant Secretary for Multifamily Housing Programs is authorized to execute Interest Enhancement Payments contracts under which HUD will pay monthly interest subsidies to purchasers of mortgages sold at mortgage auctions administered under section 221(g)(4)(C) of the National Housing Act.

Authority: Sec. 7(d), Department of Housing and Urban Development Act (42 U.S.C. 3535(d)).

Dated: December 3, 1991.

Arthur J. Hill,

Assistant Secretary for Housing—Federal Housing Commissioner.

[FR Doc. 91-29633 Filed 12-11-91; 8:45 am]

BILLING CODE 4210-27-M

DEPARTMENT OF THE INTERIOR

Bureau of Indian Affairs

Fort Hall Irrigation Project, Idaho

AGENCY: Bureau of Indian Affairs, Department of the Interior.

ACTION: Proposed operation and maintenance rates.

SUMMARY: The purpose of this notice is to change the assessment rates for operating and maintaining the Fort Hall Irrigation Project. The assessment rates are based on a prepared estimate of the cost of normal operation and maintenance of the irrigation project. Normal operation and maintenance is defined as the average per acre cost of all activities involved in delivering irrigation water, including maintaining pumps and other facilities.

EFFECTIVE DATE: Interested parties may submit written comments on or before January 13, 1992.

FOR FURTHER INFORMATION CONTACT: Portland Area Director, Portland Area Office, Bureau of Indian Affairs, 911 NE. 11th Avenue, Portland, Oregon 97232-4169, telephone FTS 429-6750; commercial (503) 231-6750.

SUPPLEMENTARY INFORMATION: This notice of proposed operation and maintenance rates and related information is published under the authority delegated to the Assistant Secretary—Indian Affairs by the Secretary of the Interior in 230 DM 1 and delegated by the Assistant Secretary—Indian Affairs to the Area Director in BIAM 3.

This notice is given in accordance with § 171.1(e) of Part 171, subchapter H, chapter I, of title 25 of the Code of Federal Regulations, which provide for the Area Director to fix and announce the rates for annual operation and maintenance assessments and related information of the Fort Hall Irrigation Project for Calendar Year 1992 and subsequent years. This notice is proposed pursuant to the authority contained in the Acts of March 1, 1907 (34 Stat. 1024), and August 31, 1954 (68 Stat. 1026).

The purpose of this notice is to announce an increase in the Fort Hall Project assessment rates proportionate with actual operation and maintenance costs. The proposed assessment rates for 1992 will amount to an increase of 3% for the Fort Hall unit and a 2% increase for the Michaud Unit. The public is welcome to participate in the rule making process of the Department of the Interior. Accordingly, interested persons may submit written comments, views and arguments with respect to the proposed rates and related regulations to the Area Director, Portland Area Office, Bureau of Indian Affairs, 911 NE. 11th Avenue, Portland, Oregon 97232-4169, no later than 30 days after publication of this notice in the **Federal Register**.

Fort Hall Irrigation Project

Regulations and Charges

Administration

The Fort Hall Irrigation Project, which consists of the Fort Hall Unit including the ceded area south of the Fort Hall Reservation, the Michaud Unit and the Minor Units on the Fort Hall Indian reservation, Idaho, is administered by the Bureau of Indian Affairs. The Superintendent of the Fort Hall Agency is the Officer-in-Charge and is fully authorized to carry out and enforce the regulations, either directly or through employee designated by him. The general regulations are contained in Part 171, Operation and Maintenance, Title 25—Indians, Code of Federal Regulations.

Irrigation Season

Water will be available for irrigation purposes from May 1 to September 30 of each year. These dates may be varied by 15 days depending on weather conditions and the necessity for doing maintenance work.

Methods of Irrigation

Where soil, topography, and other physical conditions are unfavorable for surface irrigation, and the project facilities are designed to deliver water to farm units for sprinkler irrigation, the Officer-In-Charge may limit deliveries to this type of irrigation.

Distribution and Apportionment of Water

(a) *Delivery:* Water for irrigation purposes will be delivered throughout the irrigation season by either the continuous flow or rotation method at the discretion of the Officer-in-Charge. If during a time when delivery is by the rotation methods, a water user desires to loan his turn to another eligible water user, he shall notify either the watermaster or the ditch rider who may permit such exchange, if feasible.

(b) *Preparation and Submission of Water Schedule:* If the decision of the Officer-in-Charge is to deliver water by the rotation method, the watermaster will assist the water users on each lateral in preparing a rotation schedule should they choose to get together and prepare the schedule. In cases where the water users fail to exercise this right

before March 1, the watermaster will prepare the schedule which shall be final for the season. Owners of 120 acres or more in one farm unit may elect between the continuous flow and rotation method of delivery, provided such choice does not interfere with delivery to other lands served by the lateral.

(c) *Application for Deliveries of Irrigation Water:* Request for water changes will be made at least 24 hours in advance. Not more than one change will be made per day. Changes will be made only during the ditch rider's regular tour. Pump shut-down, regardless of duration, without the required notice will result in the delivery being closed and locked. Water users will change their sprinkler lines without shutting off more than one-half of their lines at one time. Sudden and unexpected changes in ditch flow results in operating difficulties and waste of water.

Duty of Water

Depending upon available supplies of water for each unit of the Project, the duty of water is based on the delivery to the farm unit of 3.5 acre-feet of water per acre per irrigation season. This duty of water may be varied at the discretion of the Officer-in-Charge depending on supplies available, but each irrigable acre shall be entitled to its pro-rate share of the total water supply.

Charges

Bills covering irrigation charges will be issued to the owner of record taken from the Bannock, Bingham or Power County records as of December 31, preceding the due date. In the case of Indian-owned land leased to a non-Indian, when an approved lease contract is on file with the superintendent of the Fort Hall Agency, operation and maintenance charges will be billed to the lessee of record.

Basic and Other Water Charges

(a) The annual basic water charges for the operation and maintenance of the Fort Hall Irrigation Project lands in non-Indian ownership, and assessable Indian-owned lands leased to a non-Indian or a non-member of the Shoshone-Bannock Tribes of the Fort Hall Indian Reservation, Idaho, are fixed for the Calendar Year 1992 and subsequent years until further notice as follows:

	Per acre
(1) Fort Hall Unit basic rate	$20.00
(2) Michaud Unit basic rate	25.50
Additional rate for sprinkler when pressure is supplied by project	12.00
(3) Minor Units basic rates	14.00

(b) The minimum bill issued for any tract will be $25.00.

Payments

The water charges become due on April 1 of each year and are payable on or before that date. To all assessments on lands in non-Indian ownership, and lands in Indian ownership which do not qualify for free water, remaining unpaid on or after July 1 following the due date shall be considered delinquent. No water shall be delivered to any of these lands until all irrigation charges have been paid.

Interest and Penalty Fees

Interest and penalty fees will be assessed. Where required by-law, on all delinquent operation and maintenance assessment charges as prescribed in the Code of Federal Regulations, title 4, Part 102, Federal Claims Collection Standards; and 42 BIAM Supplement 3, part 3.8 Debt Collection Procedures.

Assessments on Indian Owned Land

When land owned by members of the Shoshone-Bannock Tribes of the Fort Hall Indian Reservation is first leased to non-Indians or non-members of the tribe, and an approved lease is on file at the Fort Hall Agency, the leased land is not subject to operation and maintenance assessments for three years. The three years the land is not subject to assessment need not run consecutively. When land has been leased for a total of three years, the land, when under lease to non-Indians or non-members of the tribe, is subject to operation and maintenance assessments the same as lands in non-Indian ownership and lands owned by non-members of the tribe within the project. (See Solicitor's Opinion M 28701, approved September 24, 1936, and the instructions of September 19, 1938, and instructions of December 1, 1938).

Wilford Bowker,

Acting Portland Area Director.

[FR Doc. 91-29695 Filed 12-11-91; 8:45 am]

BILLING CODE 4310-02-M

Bureau of Land Management

[CA-050-02-4333-10]

Samoa Dunes Recreation Area, et al.; Closure Order

ACTION: Notice of closure order.

SUMMARY: Notice is hereby given related to the emergency temporary closure of Bureau of Land Management (BLM) administered lands to vegetative gathering in accordance with regulations contained in 43 CFR 8364.1(A). This action affects approximately 412± acres of public land located in the Samoa Dunes Recreation Area and the BLM-administered land within Mad River Slough and Dunes Cooperative Management Area (T.5N., R.1W., section 31; T.4N., R.1W., section 6; and T.6N., R.1W., sections 26, 27, 34 and 35, Humboldt Meridian). These public lands will be temporarily closed to gathering of all vegetative material to protect Menzies' Wallflower (*Erysimum menziesii*) habitat until May 1, 1992.

DATES: December 11, 1991.

ADDRESSES: Maps and supporting documentation of the area temporarily closed to vegetative gathering are available for review at the following location: Bureau of Land Management, Arcata Resource Area, 1125 16th Street, room 219, Arcata, CA 95521.

FOR FURTHER INFORMATION CONTACT: Lynda Roush, Area Manager, at the Arcata address given above: Telephone (707) 822-7648.

SUPPLEMENTARY INFORMATION: The authority for this closure is 43 CFR 8364.1(a). Any person who fails to comply with this order is subject to arrest and a fine of up to $100,000 and/or imprisonment not to exceed 12 months. The purpose of temporarily closing the Samoa Dunes Recreation Area and Mad River Slough and Dunes Cooperative Management Area to gathering of vegetative material is to prevent visitors from inadvertently trampling Menzies' Wallflower seedlings as they hike through this rare plant habitat. This particular plant species is listed as endangered by the California Department of Fish and Game, and is proposed for Federal listing by the U.S. Fish and Wildlife Service. Its habitat is restricted to the coastal foredune community of four dune systems—Monterey Peninsula, Monterey Bay, Ten-Mile River and the Humboldt Bay near Eureka. During the temporary closure period, the Bureau of Land Management will analyze methods that can be used to protect Menzies' Wallflower habitat. Until this is

completed, however, vegetative gatherers must be prevented from meandering throughout the area, as these plants are extremely difficult to identify during the winter months and unintentional trampling results in resource damage.

Daniel E. Averill,

Acting Arcata Area Manager.

[FR Doc. 91-29704 Filed 12-11-91; 8:45 am]

BILLING CODE 4310-40-M

[AZ-010-92-4410-08; 1784-010]

Arizona Strip District Advisory Council Field Tour and Meeting

AGENCY: Bureau of Land Management, Arizona Strip District, Interior.

ACTION: Notice of Advisory Council Field Tour and meeting.

SUMMARY: The Arizona Strip District Advisory Council will tour the Beaver Dam Slope area and discuss the proposed ACEC, future activity plans. Other topics to be discussed are Resource Management Plan protest, off-highway-vehicle designations, proposed development in the area and the Approved Resource Management Plan and Implementation Schedule.

DATES: The Advisory Council will begin their tour at the Ramada Inn, 1440 E. St. George Blvd., St. George, Utah at 8 a.m. on January 30, 1992. The Council will return to St. George that evening and a half day meeting is scheduled the following day, January 31, 1992 in the Ramada Inn conference room beginning at 8 a.m.

FOR FURTHER INFORMATION CONTACT: G. William Lamb, District Manager, 390 N. 3050 E., St. George, Utah 84770 (Phone 801/673-3545).

SUPPLEMENTARY INFORMATION: The Council tour is open to the public, but the public must provide their own transportation.

The Advisory Council will consider both oral and written statements from the public at 8 a.m. on January 31st.

Dated: December 5, 1991.

G. William Lamb,

District Manager.

[FR Doc. 91-29696 Filed 12-11-91; 8:45 am]

BILLING CODE 4310-32-M

[MT-921-4120-16]

Qualification for Category 5 Royalty Rate Reduction in Designated Area of Fort Union Federal Coal Production Region, et al.

AGENCY: Bureau of Land Management, Montana State Office.

ACTION: Notice of qualification for Category 5 Royalty Rate Reduction in designated areas of Fort Union Federal Coal Production Region; establishment of Competitive Royalty Rate; and acceptance of applications for consideration for Royalty Relief: Richland County, Montana.

SUMMARY: This notice is issued for the purpose of announcing: (1) The determination that the county of Richland, State of Montana within the Fort Union Federal Coal Production Region meets the criteria to qualify for royalty rate differentials under Category 5 of the Royalty Rate Reduction guidelines published February 27, 1990 (55 FR 6841), and clarified May 2, 1990 (55 FR 08401); (2) Establishment of the Category 5 royalty rate at 2 percent for the county of Richland, Montana; and (3) That applications will be accepted by the Bureau of Land Management, Montana State Office, for consideration for royalty relief under Category 5 for this area effective December 5, 1991.

EFFECTIVE DATE: December 5, 1991.

FOR FURTHER INFORMATION CONTACT: Donald L. Gilchrist, Telephone 406-255-2816, Montana State Office, Bureau of Land Management, P.O. Box 36800, Billings, Montana 59107.

SUPPLEMENTARY INFORMATION: The "Fort Union Region Category 5 Royalty Rate Reduction Study" requested by the State Director, Montana State Office, Bureau of Land Management, has been completed by the Northwest Regional Evaluation Team of the Bureau of Land Management of the Department of the Interior, and is the basis for the following determinations:

A. *Geographic Area Qualification.* The county of Richland, State of Montana, meets the five criteria established to qualify under Category 5 for royalty rate differentials as follows: (1) The Federal Government is not market dominant in this area; (2) Federal royalty rates are above the current market royalty rate for nonfederal rates in the area; (3) Based on a mine-by-mine examination, it is apparent that there are instances where federal coal can be expected to be bypassed in the near future due to the royalty rate differential between federal and nonFederal coal; (4) All three previous criteria considerations have been found to exist throughout the area; and (5) A plant-by-plant analysis, based on actual shipments, indicates that Powder River Basin coal is competitive in the area. However, it has also been shown that a reduction in the federal royalty rate would not have a significant impact on this competitiveness.

B. *Establishment of Competitive Royalty Rates.* The competitive royalty rate of 2 percent is established to promote development of federal coal reserves situated in the county of Richland, Montana that may otherwise by bypassed in favor of nonfederal coal having a lower royalty rate.

C. *Category 5 Reduction in Royalty Applications.* Federal lease-specific applications for Category 5 Reduction in Royalty for coal deposits within Richland county, Montana will be accepted by the Montana State Office, Bureau of Land Management, P.O. Box 36800, Billings Montana 59107 effective December 5, 1991. Applications will be processed pursuant to the regulations at 43 CFR part 3485 as established by the "Royalty Rate Reduction Guidelines for the Solid Leasable Minerals." The geographic area qualifications and the establishment of the competitive royalty rate under Category 5 of the "Royalty Rate Reduction Guidelines for the Solid Leasable Minerals" will be reviewed and updated 2 years from the effective date hereof.

Dated: December 5, 1991.

Robert H. Lawton,

State Director.

[FR Doc. 91-29711 Filed 12-11-91; 8:45 am]

BILLING CODE 4310-DN-M

[MT-921-4120-16]

Qualification for Category 5 Royalty Rate Reduction in Designated Areas of Fort Union Federal Coal Production Region, et al.

AGENCY: Bureau of Land Management, Montana State Office.

ACTION: Notice of qualification for Category 5 Royalty Rate reduction in designated areas of Fort Union Federal Coal Production Region; establishment of Competitive Royalty Rate; and acceptance of applications for consideration for Royalty Relief: McLean, Mercer, Oliver, and Bowman Counties, North Dakota.

SUMMARY: This notice is issued for the purpose of announcing: (1) The determination that the counties of McLean, Mercer, Oliver, and Bowman, North Dakota within the Fort Union Federal Coal Production Region meet the criteria to qualify for royalty rate differentials under Category 5 of the Royalty Rate Reduction guidelines published February 27, 1990 (55 FR 6841), and clarified May 2, 1990 (55 FR 08401); (2) Establishment of the Category 5 royalty rate at 2 percent for the counties of McLean, Mercer, Oliver, and

Bowman, North Dakota; and (3) That applications will be accepted by the Bureau of Land Management, Montana State Office, for consideration for royalty relief for these areas effective December 5, 1991.

EFFECTIVE DATE: December 5, 1991.

FOR FURTHER INFORMATION CONTACT: Donald L. Gilchrist, Telephone 406–255–2816, Montana State Office, Bureau of Land Management, P.O. Box 36800, Billings, Montana 59107.

SUPPLEMENTARY INFORMATION: The "Fort Union Region Category 5 Royalty Reduction Study" requested by the State Director, Montana State Office, Bureau of Land Management, has been completed by the Northwest Regional Evaluation Team of the Bureau of Land Management of the Department of the Interior, and is the basis for the following determinations:

A. *Geographic Area Qualification.* The counties of McLean, Mercer, Oliver, and Bowman, North Dakota meet the established five criteria to qualify under Category 5 for royalty rate differentials as follows: (1) The Federal Government is not market dominant in this area; (2) Federal royalty rates are above the current market royalty rate for nonfederal rates in the area; (3) Based on a mine-by-mine examination, it is apparent that there are instances where federal coal can be expected to be bypassed in the near future due to the royalty rate differential between federal and nonfederal coal; (4) All three previous criteria considerations have been found to exist throughout the region; and (5) A plant-by-plant analysis, based on actual shipments, indicates that Powder River Basin coal is competitive in the area. However, it has also been shown that a reduction in the federal royalty rate would not have a significant impact on this competitiveness.

B. *Establishment of Competitive Royalty Rates.* The competitive royalty rate of 2 percent is established to promote development of federal coal reserves situated in the counties of McLean, Mercer, Oliver, and Bowman, North Dakota that may otherwise be bypassed in favor of nonfederal coal having a lower royalty rate.

C. *Category 5 Reduction in Royalty Applications.* Federal lease-specific applications for Category 5 Reduction in Royalty for coal deposits within the counties in North Dakota named above will be accepted by the Montana State Office, Bureau of Land Management, P.O. Box 36800, Billings, Montana 59107 effective December 5, 1991. Applications will be processed pursuant to the regulations at 43 CFR part 3485 as established by the "Royalty Rate Reduction Guidelines for the Solid Leasable Minerals." The geographic area qualification and the establishment of the competitive royalty rate under Category 5 of the "Royalty Rate Reduction Guidelines for the Solid Leasable Minerals" will be reviewed and updated 2 years from the effective date hereof.

Dated: December 5, 1991.

Robert H. Lawton,

State Director.

[FR Doc. 91–29712 Filed 12–11–91; 8:45 am]

BILLING CODE 4310–DN–M

[AK–932–4214–10; AA–57996]

Order Providing for Opening of Land Subject to Section 24 of the Federal Power Act; Alaska

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice.

SUMMARY: The purpose of this order is to open approximately 6.25 acres of National Forest System land withdrawn for the Federal Energy Regulatory Commission (FERC) Power Project (PP) No. 10198 (previously PP No. 1521), for selection of the land by the State of Alaska.

EFFECTIVE DATE: December 12, 1991.

FOR FURTHER INFORMATION CONTACT: Sandra C. Thomas, BLM Alaska State Office, 222 W. 7th Avenue, No. 13, Anchorage, Alaska 99513–7599, 907–271–5477.

SUPPLEMENTARY INFORMATION: By virtue of the authority vested in the Secretary of the Interior by section 24 of the Federal Power Act (FPA) of June 10, 1920, as amended (16 U.S.C. 818), and pursuant to the determination of FERC in DVAK–143–Alaska, it is ordered as follows:

Subject to valid existing rights, at 8 a.m. Alaska Standard Time, on December 12, 1991, the following described land is hereby opened for selection by the State of Alaska under the Alaska Statehood Act of July 7, 1958, 48 U.S.C. prec. 21 (1988), subject to the provisions of section 24 of the FPA:

The FERC Power Project No. 10198 (Pelican Hydroelectric Water Power Project), located within the Tongass National Forest, on Pelican Creek on Chichagof Island, near Pelican, Alaska, within the NE¼NW¼ and NW¼NE¼, sec. 20, T. 45 S., R. 57 E., Copper River Meridian. The area affected by this order contains approximately 6.25 acres.

As provided by section 6(g) of the Alaska Statehood Act, the State of Alaska is provided a preference right of selection for the land described above, for a period of ninety-one (91) days from the date of publication of this order, if such land is otherwise available. If the land described herein is not selected by the State, it will continue to be subject to the terms and conditions of the Tongass National Forest reservation, and the FERC Power Project No. 10198, pursuant to the authority set forth in section 24 of the FPA, as amended (16 U.S.C. 818).

Dated: December 2, 1991.

Sue A. Wolf,

Chief, Branch of Land Resources.

[FR Doc. 91–29649 Filed 12–11–91; 8:45 am]

BILLING CODE 4310–JA–M

[ID–943–5700–11; IDI–28754]

Issuance of Disclaimer of Interest to Lands; Idaho

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice of Issuance of Disclaimer of Interest in Lands in Idaho.

SUMMARY: The United States of America, pursuant to the provisions of section 315 of the Federal Land Policy and Management Act of 1976 (43 U.S.C. 1745), proposes to disclaim and release all interest to Forest C. Finicum and Alice J. Finicum, the owners of record, for the following described property, to wit:

Boise Meridian

T. 9 N., R. 5 W.,

All lands westerly of Tax Block 64, lot 4, sec. 28, and any accretions attaching thereto, between the original meander line as shown on the plat of survey approved November 20, 1868, by the Bureau of Land Management and the existing ordinary high water line of the right bank of the Payette River.

The official records and the original public land survey of the Bureau of Land Management show that the land described above is accreted land and lies between the original surveyed meander line and the existing ordinary high water line of the right bank of the Payette River. The land, therefore, is not public land; and the application by Forest C. Finicum and Alice J. Finicum, the adjoining landowners, for a disclaimer by the United States as to this land will be approved if no valid objections are received. This action will clear a cloud on the title of the applicant's land.

DATES: Comments or protests to this action should be received by March 12, 1992.

ADDRESSES: Comments or protests must be filed with: State Director (943), Bureau of Land Management, 3380 Americana Terrace, Boise, Idaho 83706.

FOR FURTHER INFORMATION CONTACT: Sally Carpenter, at the above address, or (208) 384–3163.

Dated: December 4, 1991.

Jerry L. Kidd,

Deputy State Director for Operations.

[FR Doc. 91–29702 Filed 12–11–91; 8:45 am]

BILLING CODE 4310–GG–M

[MT–070–01–4212–21; MTM80417; MTM80418]

Realty Action: Leases; Lewis and Clark County, Montana

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice of realty action, proposal to lease public lands in Lewis and Clark County, Montana.

SUMMARY: The Bureau of Land Management proposes to issue two leases on the following described public lands to resolve two unintentional occupancy trespasses.

Principal Meridian, Montana

T. 10 N., R. 1 W.,

Sec. 6, two unofficial Metes and Bounds Lots within Lot 4; comprising 0.70 acres.

The lands are located at the upper end of Hauser Lake about 13 miles east of Helena, Montana. The leases would be issued under section 302 of the Federal Land Policy and Management Act (FLPMA) of 1976; 43 U.S.C. 1732, and would be issued noncompetitively. The leases would be issued for a term of 10 years and would be nonrenewable. Fair market rental will be collected for the use of these lands, as well as full payment of past trespass liabilities and reasonable administrative and monitoring costs for processing the leases. A final determination on the lease of these public lands will be made after completion of an environmental assessment.

DATES: On or before January 13, 1992, interested parties may submit comments to the Headwaters Resource Area Manager, P.O. Box 3388, Butte, Montana 59702.

FOR FURTHER INFORMATION CONTACT: Bob Rodman, 406–494–5059, at the above address.

Dated: December 4, 1991.

Merle Good,

Area Manager.

[FR Doc. 91–29714 Filed 12–11–91; 8:45 am]

BILLING CODE 4310–DN–M

[CA–940–92–4730–12]

Filing of Plats of Survey; California

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice.

SUMMARY: The purpose of this notice is to inform the public and interested state and local government officials of the latest filing of Plats of Survey in California.

EFFECTIVE DATES: Filing was effective at 10 a.m. on the date of submission to the Bureau of Land Management (BLM), California State Office, Public Room.

FOR FURTHER INFORMATION CONTACT: Clifford A. Robinson, Chief, Branch of Cadastral Survey, Bureau of Land Management (BLM), California State Office, 2800 Cottage Way, room E–2845, Sacramento, CA 95825, 916–978–4775.

SUPPLEMENTARY INFORMATION: The plats of Survey of lands described below have been officially filed at the California State Office, Sacramento, CA.

Humboldt Meridian, California

T. 16 N., R. 2 E.,—Survey Field Notes representing the Corrective Dependent Resurvey of a portion of the subdivision of section 30, (under Group 971) accepted April 16, 1991, to meet certain administrative needs of the U.S. Forest Service, Six Rivers National Forest.

Mount Diablo Meridian, California

T. 3 S., R. 6 W., and T. 4 S., R. 6 W.—Survey of a portion of the Golden Gate National Recreation Area Boundary, (Group 984) accepted July 26, 1991, to meet certain administrative needs of the National Park Service, Golden Gate National Recreational Area.

T. 26 S., R. 21 E.—Dependent resurvey, survey and subdivision of section 2, (Group 975) accepted August 5, 1991, to meet certain administrative needs of the BLM, Bakersfield District, Caliente Resource Area.

T. 26 S., R. 10 E.—Supplemental plat of the S½ section 33, accepted August 6, 1991, to meet certain administrative needs of the BLM, Bakersfield District, Caliente Resource Area.

T. 9 N., R. 10 E.—Supplemental plat of the N½ section 13, accepted August 7, 1991, to meet certain administrative needs of the BLM, Bakersfield District, Folsom Resource Area.

T. 20 N., R. 7 E.—Supplemental plat of the SW¼ section 18, accepted August 13, 1991, to meet certain administrative needs of the U.S. Forest Service, Plumas National Forest.

T. 9 N., R. 10 E.—Supplemental plat of section 12, accepted August 20, 1991, to meet certain administrative needs of the BLM, Bakersfield District, Folsom Resource Area.

T. 9 N., R. 11 E.—Supplemental plat of the SE¼ section 6, accepted August 23, 1991, to meet certain administrative needs of the BLM, Bakersfield District, Folsom Resource Area.

T. 39 N., R. 12 W.—Metes-and-bounds survey of tracts 37 through 45 (2) plats), accepted September 10, 1991, to meet certain administrative needs of the U.S. Forest Service, Klamath National Forest.

T. 14 N., R. 7 W.—Dependent resurvey of a portion of the north boundary and a portion of the subdivisional lines, (Group 966) accepted September 16, 1991, to meet certain administrative needs of the BLM, Ukiah District, Clearlake Resource Area.

T. 9 N., R. 10 E.—Supplemental plat of the N½ section 12, accepted September 17, 1991, to meet certain administrative needs of the BLM, Bakersfield District, Folsom Resource Area.

T. 33 N., R. 10 W.—Supplemental plat of the NE¼ section 19, accepted September 20, 1991, to meet certain administrative needs of the BLM, Ukiah District, Reddy Resource Area.

T. 32 N., R. 9 W.—Dependent resurvey, and partial subdivision of section 32, (Group 1065) accepted September 27, 1991, to meet certain administrative needs of the BLM, Ukiah District, Redding Resource Area.

T. 33 N., R. 9 W.—Dependent resurvey, and metes-and-bounds survey of lot 60 in section 5, (Group 1065) accepted September 27, 1991, to meet certain administrative needs of the BLM, Ukiah District, Redding Resource Area.

San Bernardino Meridian, California

T. 16 S., R. 6 E., and T. 17 S., R. 6 E.—Dependent resurvey of a portion of the La Posta Indian Reservation, Tract 58, in section 31, T. 16 S., R. 6 E., and section 6, T. 17 S., R. 6 E., (Group 1088) accepted April 16, 1991, to meet certain administrative needs of the Bureau of Indian Affairs.

T. 7 S., R. 7 E.—Supplemental plat of the SE¼ section 2, accepted May 29, 1991, to meet certain administrative needs of the Bureau of Indian Affairs.

T. 2 N., R. 3 W.—Supplemental plat of section 28, accepted June 17, 1991, to meet certain administrative needs of the U.S. Forest Service, San Bernardino National Forest.

All of the above listed surveys are now the basic record for describing the lands for all authorized purposes. The surveys will be placed in the open files in the BLM, California State Office and will be available to the public as a matter of information. Copies of the surveys and related field notes may be

furnished to the public upon payment of the appropriate fee.

Dated: December 5, 1991.

Clifford A. Robinson,

Chief, Branch of Cadastral Survey.

[FR Doc. 91-29709 Filed 12-11-91; 8:45 am]

BILLING CODE 4310-40-M

[NV-920-92-4133-12]

Availability; Mineral Surveys

November 20, 1991.

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice of the availability of 7 mineral survey reports produced by the U.S. Geological Survey (USGS)/U.S. Bureau of Mines (BM) on 8 Bureau of Land Management (BLM) Wilderness Study Areas (WSAs) in Nevada. Announcement of a 60-day comment period to obtain previously unknown mineral information on the areas.

SUMMARY: The Federal Land Policy and Management Act (Pub. L. 94-579) requires the U.S. Geologic Survey and the U.S. Bureau of Mines to conduct mineral surveys on certain Bureau of Land Management WSAs to determine the mineral values, if any, that may be present. In Nevada, 7 new reports on WSAs have been completed. This is the fourth set of reports to be released. This notice gives the public an opportunity to obtain the reports and to review and offer previously unknown mineral information on the WSAs. New public comment information/data will be screened by the BLM. The State Director of that agency may ask the Geological Survey or the Bureau of Mines to determine if the information contains significant new data or an interpretation that was not available at the time the mineral survey report was prepared. Geological Survey or the Bureau of Mines would determine if additional field investigations should be undertaken. Recommendations for the designation of an area as wilderness will be made to the Secretary of the Interior by the BLM. The Secretary shall, in turn, make recommendations to the President who will advise Congress. A recommendation of the President for designation as wilderness shall become effective only if so provided by an Act of Congress.

DATES: The public review of the 25 mineral survey reports named in this notice shall begin on December 1, 1991, and shall continue for 60 days (January 31, 1992).

ADDRESSES: All data and written comments should be directed to the State Director (NV-920), Bureau of Land Management, P.O. Box 12000, Reno, Nevada 89520. Copies of the 7 bulletins may be purchased from: Brooks and Open-File Reports Section, U.S. Geological Survey, Federal Center, Box 25425, Denver, CO 89225 (Telephone: 303-236-7476).

FOR FURTHER INFORMATION CONTACT: Jack Crowley, Mineral Division, (702) 785-6572, or Dave Wolf, Wilderness Coordinator, (702) 785-6483, Nevada State Office, Bureau of Land Management, P.O. Box 12000, 850 Harvard Way, Reno, Nevada 89520.

SUPPLEMENTARY INFORMATION: The 7 mineral reports available for review and for purchase are listed below. The price noted on bulletins is that charged by the Books and Open-File Reports Section, U.S. Geological Survey (303) 236-7476, and includes third or fourth class mailing. First class or foreign mailings require an addition of ten percent.

Marble Canyon WSA, White Pine County (USGS 1728-G)	$1.75
Lime Canyon WSA, Clark County (USGS 1730-D)	1.50
Black Rock Desert WSA, Humboldt County (Open-File Report 90-618*)	2.00
Queer Mountain WSA, Esmeralda County (Open-File Report 90-619)	2.00
Grapevine Mountain WSA, Esmeralda County (Open-File Report 90-620)	2.00
La Madre Mountains WSA, Clark County (Open-File Report 90-679*)	2.75
El Dorado and Ireteba Peaks WSAs, Clark County (Open-File Report 91-323)	5.00

*Supplement to previously published bulletin.

The reports are also available for review in the offices of the BLM in Nevada. Those are in Reno, Elko, Winnemucca, Carson City, Ely, Las Vegas, Battle Mountain, Caliente and Tonopah. Libraries with copies include the Nevada State Library in Carson City; the government Documents Section of the University of Nevada, Reno. Community libraries which have been sent copies are located in the following Nevada cities: Fallon, Minden, Elko, Winnemucca, Pioche, Yerington, Hawthorne, Lovelock, Ely, Austin, Eureka, Caliente, Tonopah, Pahrump, Goldfield and Battle Mountain. Upon receipt of additional mineral survey reports on Nevada WSAs, additional comment periods will be held.

Dated: November 20, 1991.

Robert G. Steele,

Acting State Director, Nevada.

[FR Doc. 91-29699 Filed 12-11-91; 8:45 am]

BILLING CODE 4310-HC-M

Fish and Wildlife Service

Receipt of Applications for Permit

The following applicants have applied for a permit to conduct certain activities with endangered species. This notice is provided pursuant to section 10(c) of the endangered Species Act of 1973, as amended (16 U.S.C. 1531, *et seq.*):

PRT 760317

Applicant: R. Bruce Thatcher, South Williamsport, PA.

The applicant requests a permit to import a sport-hunted trophy of a male bontebok (*Damaliscus dorcas dorcas*) from the captive herd of W.S. Murray, Graaff-Reinet, South Africa, for enhancement of survival of the species.

PRT 763260

Applicant: Jay Morrish, Broken Arrow, OK.

The applicant requests a permit to import a sport-hunted trophy of a male bontebok (*Damaliscus dorcas dorcas*) from the captive herd of Robin Hockly, Bedford, South Africa, for enhancement of survival of the species.

PRT 761565

Applicant: Zoo Midwest Ornithological Assoc., C/O Milwaukee County Zoo, Milwaukee, WI.

The applicant requests a permit to import up to 30 captive hatched northern bald (=Waldrapp) ibis (*Geronticus eremita*) from Tel Aviv University, Tel Aviv, Israel, for purposes of breeding and display.

PRT 761887

Applicant: American Museum of Natural History, New York, NY.

The applicant requests a permit to export and reimport specimens of endangered or threatened species already accessioned in their collection for purposes of scientific research.

PRT 762744

Applicant: American Circus Corp., Deland, FL.

The applicant requests a permit to purchase 2 wild-caught female Asian elephants (*Elephas maximus*) for educational and breeding purposes.

PRT 763770

Applicant: Zoological Society of San Diego, San Diego, CA.

The applicant requests a permit to import one captive-born male and one captive-born female southern pudu (*Pudu pudu*) from the Zoologischer Garten Wuppertal, Wuppertal, Germany for breeding purposes.

PRT 763638

Applicant: Adriatic Animal Attractions, Inc., Deland, FL.

The applicant requests a permit to export and reimport one male and two female captive-bred white tigers (*Panthera tigris*), born in the United States, to Josip Marcan, Circo Americano, Verona, Italy, for educational purposes.

PRT 763759

Applicant: Binder Park Zoological Society, Inc., Battle Creek, MI.

The applicant requests a permit to import four female and two male cheetahs (*Acinonyx jubatus*) which were born in captivity at the National Zoological Gardens of South Africa, Pretoria, South Africa. Animals will be used for zoological display and captive breeding.

PRT 764121

Applicant: Leo Shortino, Saratoga, CA.

The applicant requests a permit to import the sport-hunted trophy of a male bontebok (*Damaliscus dorcus dorcus*) from the captive herd of Robin Hockly, Bedford, South Africa, for enhancement of survival of the species.

PRT 762581

Applicant: San Antonio Zoological Gardens, San Antonio, TX.

The applicant requests a permit to export two captive-born male African hunting dogs (*Lycaon pictus pictus*) to the Royal Melbourne Zoological Gardens, Victoria, Australia, for the purpose of captive breeding.

PRT 764200

Applicant: Toni Penner, Sebastopol, CA.

The applicant requests a permit to purchase in interstate commerce three Hawaiian (Nene) geese (*Branta sandvicensis*) from Sea World Parks, Orlando, Florida, for captive breeding.

Written data or comments should be submitted to the Director, U.S. Fish and Wildlife Service, Office of Management Authority, 4401 North Fairfax Drive, room 432, Arlington, Virginia 22203 and must be received by the Director on or by January 13, 1992.

Documents and other information submitted with these applications are available for review by any party who submits a written request for a copy of such documents to, or by appointment during normal business hours (7:45–4:15) in, the following office January 13, 1992: U.S. Fish and Wildlife Service, Office of Management Authority, 4401 North Fairfax Drive, room 432, Arlington, Virginia 22203. Phone: (703/358-2104); FAX: (703/358–2281).

Dated: December 6, 1991.

Maggie Tieger,

Acting Chief, Branch of Permits, Office of Management Authority.

[FR Doc. 91–29652 Filed 12-11–91; 8:45 am]

BILLING CODE 4310–55–M

Availability of a Draft Recovery Plan for the Dwarf Wedge Mussel for Review and Comment

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Notice of document availability.

SUMMARY: The U.S. Fish and Wildlife Service announces the availability for public review of a draft Dwarf Wedge Mussel Recovery Plan. This endangered species is found in river systems in New Hampshire, Vermont, Connecticut, New York, Virginia, and North Carolina. The Service solicits review and comment from the public on this draft Plan.

DATES: Comments on the draft Recovery Plan must be received on or before February 10, 1992, to receive consideration by the Service.

ADDRESSES: Persons wishing to review the draft Recovery Plan may obtain a copy from the Annapolis Field Office, U.S. Fish and Wildlife Service, 1825 Virginia Street, Annapolis, Maryland 21401 (301/269–5448), or the Northeast Regional Office, One Gateway Center, suite 700, Newton Corner, Massachusetts 02158 (617/965–5100 ext. 316). Comments on the plan should be addressed to G. Andrew Moser at the above Annapolis Field Office address. The plan is available for public inspection, by appointment, during normal business hours at the above address.

FOR FURTHER INFORMATION CONTACT: G. Andrew Moser (see Addresses).

SUPPLEMENTARY INFORMATION:

Background

Restoring an endangered or threatened animal or plant to the point where it is again a secure, self-sustaining member of its ecosystem is a primary goal of the U.S. Fish and Wildlife Service's endangered species program. To help guide the recovery effort, the Service is working to prepare Recovery Plans for most of the listed species native to the United States. Recovery Plans describe actions considered necessary for conservation of the species, establish criteria for the recovery levels for downlisting or delisting them, and estimate time and cost for implementing the recovery measures needed.

The Endangered Species Act of 1973 (Act), as amended (16 U.S.C. 1531 *et seq.*) requires the development of Recovery Plans for listed species unless such a Plan would not promote the conservation of a particular species. Section 4(f) of the Act, as amended in 1988, requires that public notice and an opportunity for public review and comment be provided during Recovery Plan development. The Service will consider all information presented during a public comment period prior to approval of each new or revised Recovery Plan. The Service and other Federal agencies will also take these comments into account in the course of implementing Recovery Plans.

The document submitted for review is the draft Dwarf Wedge Mussel (*Alasmidonta heterodon*) Recovery Plan. This freshwater mussel has declined precipitously over the last one hundred years. Once found in approximately 70 locations in 15 major Atlantic slope drainages from New Brunswick to North Carolina, it is now known from only 17 localities in seven drainages. The dwarf wedge mussel lives on muddy sand, sand, and gravel bottoms in creeks and rivers of various sizes in areas of slow to moderate current, good water quality, and little silt deposition. Its recent dramatic decline, a well as the small size and extent of most of its remaining populations, indicate that it is highly vulnerable to extirpation. The dwarf wedge mussel was listed as endangered in March of 1990.

The objectives of the draft Recovery Plan are, first, to reclassify the dwarf wedge mussel from endangered to threatened status, and, ultimately, to delist the species. The dwarf wedge mussel will be considered for reclassification when populations in the mainstem Connecticut River, Ashuelot River, Neversink River, upper Tar River, and 80% of all known populations are shown to be stable or expanding, with evidence of recent recruitment. This will be accomplished through collection of basic data, protection of dwarf wedge mussel populations and occupied habitats, a public education program, studies of the species' life history and ecological requirements, possible reintroduction of populations within the species' historical range, and monitoring of populations and habitat conditions.

This Recovery Plan is being submitted for agency review. After consideration of comments received during the review period, the Plan will be submitted for final approval.

Public Comments Solicited

The Service solicits written comments on the Recovery Plan described. All comments received by the date specified above will be considered prior to approval of the Plan.

Authority

The authority for this action is section 4(f) of the Endangered Species Act, 16 U.S.C. 1533(f).

Dated: December 3, 1991.

Nancy M. Kaufman,

Acting Regional Director.

[FR Doc. 91-29697 Filed 12-11-91; 8:45 am]

BILLING CODE 4310-55-M

Geological Survey

Information Collection Submitted to the Office of Management and Budget for Review Under the Paperwork Reduction Act

The proposal for the collection of information described below has been submitted to the Office of Management and Budget for extension of the expiration date under the provisions of the Paperwork Reduction Act (44 U.S.C. chapter 35). Copies of the proposed collection of information, related forms, and explanatory material may be obtained by contacting the Bureau's clearance officer at the telephone number listed below. Comments and suggestions on the requirements should be made within 30 days directly to the Bureau of clearance officer and to the Office of Management and Budget, Paperwork Reduction Project (1028-0046), Washington, DC 20503, telephone (202) 395-7340.

Title: Water Resources Research Program and Water Resources Technology Development Program, 30 CFR Part 402.

OMB Approval Number: 1028-0046.

Abstract: Respondents submit proposals containing plans for water-resources research or technology-development projects. This information will be used as the basis for selection and award of projects meeting the program objectives. Annual reports for multi-year awards and final reports are required on each selected project to assess scientific performance.

Bureau Form Number: None.

Frequency: Annual proposals, annual and final reports.

Description of Respondents: Educational institutions, private foundations, private firms, individuals, and agencies of local or State governments.

Estimated Completion Time: 72.

Annual Responses: 339.

Annual Burden Hours: 24,408.

Bureau Clearance Officer: Geraldine A. Wilson, Telephone (703) 648-7309.

Dated: November 19, 1991.

Philip Cohen,

Chief Hydrologist.

[FR Doc. 91-29648 Filed 12-11-91; 8:45 am]

BILLING CODE 4310-31-M

Minerals Management Service

Information Collection Submitted to the Office of Management and Budget for Review Under the Paperwork Reduction Act

The proposal for the collection of information listed below has been submitted to the Office of Management and Budget (OMB) for approval under the provisions of the Paperwork Reduction Act (44 U.S.C. chapter 35). Copies of the proposed collections of information and related forms may be obtained by contacting the Bureau's Clearance Officer at the telephone number listed below. Comments and suggestions on the proposal should be made directly to the Bureau Clearance Officer and to the Office of Management and Budget; Paperwork Reduction Project (1010-0046); Washington, DC 20503, telephone (202) 395-7340, with copies to the Chief, Engineering and Standards Branch; Engineering and Technology Division; Mail Stop 4700; Minerals Management Service; 381 Elden Street; Herndon, Virginia 22070-4817.

Title: Well (Re)Completion Report, Form MMS-330.

OMB approval number: 1010-0046.

Abstract: Respondents submit Form MMS-330 to the Minerals Management Service's (MMS) District Supervisors to be evaluated and approved or disapproved for the adequacy of the equipment, materials, and/or procedures which the lessee plans to use during the conduct of production, well-completion and well-workover operations including recompletion. The form is also used to evaluate remedial action in the event of well-equipment failure or well-control loss.

Burau form number: Form MMS-330.

Frequency: On occasion.

Description of respondents: OCS oil, gas, and sulphur lessees.

Estimated completion time: 1 hour.

Annual responses: 2,500.

Annual burden hours: 2,500.

Bureau Clearance Officer: Dorothy Christopher, (703) 787-.1239.

Dated: November 14, 1991.

Henry G. Bartholomew,

Deputy Associate Director for Operations and Safety Management.

[FR Doc. 91-29710 Filed 12-11-91; 8:45 am]

BILLING CODE 4310-MR-M

INTERSTATE COMMERCE COMMISSION

[Finance Docket No. 31976]

JP Rail, Inc.; Modified Rail Certificate

On November 20, 1991, JP Rail, Inc. (JP), a non-carrier, filed a notice for a modified certificate of public convenience and necessity under 49 CFR part 1150, subpart C, to operate a 15.47-mile line of railroad owned by the New Jersey Department of Transportation (NJDOT). The line, known as the Southern Branch (Winslow Branch) and formerly owned by Consolidated Rail Corporation (Conrail), extends between milepost 103.6, near Winslow Township, and milepost 119.07, near Vineland. JP will be replacing The Shore Fast Line, Inc. (Shore), which has operated the line under a modified certificate.[1]

The Southern Branch connects with Shore's line known as the Mary's Wye, which in turn connects with the Atlantic City Branch operated by Shore. JP has filed a notice of exemption in Docket No. 31975, JP Rail, Inc.—Acquisition and Operation Exemption—The Shore Fast Line, Inc., to acquire and operate these and other lines operated by Shore.

The Commission will serve a copy of this notice on the Association of American Railroads (Car Service Division), as agent of all railroads subscribing to the car-service and car-hire agreement, and on the American Short Line Railroad Association.

Dated: December 6, 1991.

By the Commission, David M. Konschnik, Director, Office of Proceedings.

Sidney L. Strickland, Jr.,

Secretary.

[FR Doc. 91-29680 Filed 12-11-91; 8:45 am]

BILLING CODE 7035-01-M

[1] Finance Docket No. 31051, The Shore Fast Line, Inc.—Operation—NJDOT "Winslow Branch" Rail Properties (not printed), served September 17, 1987. The notice originally involved only 10.7 miles, between milepost 103.6 and milepost 114.3 (near Buena Vista); by amendment dated November 9, 1987, the mileage was extended to milepost 119.07.

[Finance Docket No. 31975]

JP Rail, Inc; Acquisition and Operation Exemption; the Shore Fast Line, Inc.

JP Rail, Inc. (JP), a non-carrier, has filed a notice of exemption to acquire and operate the New Jersey rail lines owned or operated by The Shore Fast Line, Inc. (Shore), a class III carrier.[1] The transaction was to have been consummated on November 27, 1991.

JP will acquire the following lines owned and operated by Shore: (1) The 3.9-mile Linwood Running Track, between milepost 0.0, near Pleasantville, and milepost 3.9, near Linwood; (2) the 5-mile Pleasantville Secondary Track, between milepost 56.9, near Mount Calvary, and the connection with Consolidated Rail Corporation's (Conrail) Pennsylvania-Reading Seashore Lines main track at milepost 61.9, in Atlantic City; and (3) the approximately 0.3-mile Mary's Wye-Winslow Secondary Connection Track, in Winslow Township.[2]

In addition, JP will acquire Shore's operating or trackage rights over the following lines owned by New Jersey Transit Corporation (NJT): (1) The 30.7-mile Atlantic City Branch, between milepost 27.2, near Winslow Junction, and milepost 57.9, near Atlantic City; [3] (2) between the point of switch from No. 2 Track of the Atlantic City Branch and a point on the Cape May Branch 280 feet to the southeast; (3) between the point of switch from No. 2 Track of the Atlantic City Branch and a point on the Clementon Secondary 315 feet to the southwest; (4) between the point of switch on the Atlantic City Branch Main Track at milepost 45.4 and a point 187 feet to the south, including the derail; (5) between the point of switch from the Atlantic City Branch Passing Siding at milepost 55.9 and Shore's right-of-way/property line, including the derail; (6) between a point on the Cape May Branch 280 feet southeast of the switch from No. 2 Track of the Atlantic City Branch and a point on the Cape May Branch 5,726 feet to the southeast, near Bairdmore Avenue; (7) an approximately 570-foot line, between a point on the Clementon Secondary 315 feet southwest of the switch from No. 2 Track of the Atlantic City Branch and the connection with the Beasley Point Secondary; (8) an approximately 1,557-foot line, between the connection with the Mary's Wye line and the connection with the Cape May Branch; (9) an approximately 1,003-foot line, between mileposts 103.47 and 103.66; and (10) between milepost 53.3, near Tuckahoe, and milepost 77.0, near Rio Grande.[4]

Any comments must be filed with the Commission and served on: Gordon P. MacDougall, 1025 Connecticut Avenue, N.W., Washington, DC 20036.

This notice is filed under 49 CFR 1150.31. If the notice contains false or misleading information, the exemption is void *ab initio*. Petitions to revoke the exemption under 49 U.S.C. 10505(d) may be filed at any time. The filing of a petition to revoke will not automatically stay the transaction.

Decided: December 6, 1991.

By the Commission, David M. Konschnik, Director, Office of Proceedings.

Sidney L. Strickland, Jr.,

Secretary.

[FR Doc. 91-29682 Filed 12-11-91; 8:45 am]

BILLING CODE 7035-01-M

[1] JP has contemporaneously filed a notice, in Finance Docket No. 31976, for a modified certificate of public convenience and necessity to operate an additional 15.47 miles of line that have been operated by Shore under a modified rail certificate noticed in Finance Docket No. 31051, The Shore Fast Line, Inc.—Operation—NJDOT "Winslow Branch" Rail Properties (not printed), served September 17, 1987.

[2] Shore's acquisition of the Mary's Wye-Winslow Secondary Connection Track from Conrail was approved in Finance Docket No. 30984, The Shore Fast Line, Inc.—Exemption From 49 U.S.C. 11343 (not printed), served May 20, 1987.

[3] Shore's acquisition of the Linwood Running Track and the Pleasantville Secondary Track from Conrail and its operation of NJT's Atlantic City Branch were exempted in Finance Docket No. 30156, Better Materials Corporation and J.C. McHugh—Control Exemption—The Shore Fast Line, Inc., and The Shore Fast Line, Inc.—Operation and Commodities Clause Exemption (not printed), served May 3, 1983.

[4] Shore's acquisition of local trackage rights over these lines was exempted in Finance Docket No. 31025, The Shore Fast Line, Inc.—Trackage Rights Exemption—New Jersey Transit Corporation (not printed), served May 1, 1987, and Finance Docket No. 31312, The Shore Fast Line, Inc.—Trackage Rights Exemption—New Jersey Transit Corporation (not printed), served November 20, 1989.

DEPARTMENT OF JUSTICE

Information Collections Under Review

The Office of Management and Budget (OMB) has been sent the following collection(s) of information proposals for review under the provisions of the Paperwork Reduction Act (44 U.S.C. chapter 35) and the Paperwork Reduction Reauthorization Act since the last list was published. Entries are grouped into submission categories, with each entry containing the following information:

(1) The title of the form/collection;

(2) The agency form number, if any, and the applicable component of the Department sponsoring the collection;

(3) How often the form must be filled out or the information is collected;

(4) Who will be asked or required to respond, as well as a brief abstract;

(5) An estimate of the total number of respondents and the amount of time estimated for an average respondent to respond;

(6) An estimate of the total public burden (in hours) associated with the collection; and,

(7) An indication as to whether Section 3504(h) of Public Law 96-511 applies.

Comments and/or suggestions regarding the item(s) contained in this notice, especially regarding the estimated public burden and associated response time, should be directed to the OMB reviewer, Ms. Lin Liu on (202) 395-7340 and to the Department of Justice's Clearance Officer, Mr. Lewis Arnold, on (202) 514-4305. If you anticipate commenting on a form/collection, but find that time to prepare such comments will prevent you from prompt submission, you should notify the OMB reviewer and the DOJ Clearance Officer of your intent as soon as possible.

Written comments regarding the burden estimate or any other aspect of the collection may be submitted to Office of Information and Regulatory Affairs, Office of Management and Budget, Washington, DC 20503, and to Mr. Lewis Arnold, DOJ Clearance Officer, SPS/JMD/5031 CAB, Department of Justice, Washington, DC 20530.

New Collection

(1) 1991 Census of Probation and Parole Agencies.

(2) CJ-36, CJ-36A, Office of Justice Programs, Bureau of Justice Statistics.

(3) Every five years.

(4) State or local governments. The Census will provide data on demographic characteristics and offenses of persons on probation and parole. Data and agency services, programs, drug testing and treatment, staffing, training, and budget will also be collected. The last Census was conducted in 1978. Data will be used for program planning and policy making for corrections.

(5) 4000 annual responses at .775 hours per response.

(6) 3100 annual burden hours.

(7) Not applicable under 3504(h).

Public comment on this item is encouraged.

Dated: December 6, 1991.

Lewis Arnold,

Department Clearance Officer, Department of Justice.

[FR Doc. 91-29639 Filed 12-11-91; 8:45 am]

BILLING CODE 4410-18-M

A.A. Mactal Construction Co., Inc. et al.; Lodging of Consent Decree

In accordance with the policy of the Department of Justice, 28 CFR 50.7, notice is hereby given that a complaint styled *United States* v. *A.A. Mactal Construction Co. Inc., et al.* was filed in the United States District Court for the District of Kansas on August 22, 1989. On 11/29/91 a consent decree was lodged with the Court in settlement of the allegations in that complaint relating to defendant Kansas Power and Light Co. Inc. The complaint, brought pursuant to sections 113(b) of the Clean Air Act ("the Act") 42 U.S.C. 7413(b), alleged *inter alia* that in the process of conducting renovation operations at (1) the Kansas Power and Light facility in Lawrence, Kansas, and (2) at the Kansas City's School Districts' Southwest High School, defendant Mactal committed various violations of the National Emission Standards for Hazardous Air Pollutants ("NESHAP") for asbestos, promulgated under section 112 of the Act, 42 U.S.C. 7412, and codified at 40 CFR part 61, subpart M. The violations included failure to properly remove, wet, and dispose of asbestos containing material. Kansas Power and Light (KPL) was named as a defendant in the complaint because the violations occurred on KPL's property.

Under the terms of the proposed partial consent decree, KPL will be dismissed as a defendant in return for paying the United States the sum of $15,000 in civil penalties for the violations alleged against it in the government's complaint. In addition, KPL agrees to sample for the existence of asbestos containing material before conducting any future renovation projects.

The Department of Justice will receive comments relating to the proposed consent decree for a period of 30 days from the date of this publication. Comments should be addressed to the Assistant Attorney General of the Environment and Natural Resources Division, Department of Justice, 10th and Pennsylvania Avenue, NW., Washington, DC 20530. All comments should refer to *United States* v. *A.A. Mactal Construction Co. Inc. et al.* D.J. Ref. 90-5-2-1-1388.

The proposed consent decree may be examined at the Environmental Enforcement Section Document Center, 601 Pennsylvania Ave. NW., Box 1097, Washington, DC 20004, (202) 347-7829. A copy of the proposed consent decree may be obtained in person or by mail from the Document Center. In requesting a copy, please enclose a check in the amount of $2.50 (25 cents per page reproduction costs) payable to Consent Decree Library. The proposed partial Consent Decree may also be reviewed at the Environmental Protection Agency.

EPA Region VII

Contact: Henry Rompage, Office of Regional Counsel, U.S. Environmental Protection Agency, Region VII, 726 Minnesota Ave., Kansas City, KS 66101

and

The Office of the United States Attorney, 812 North Seventh St., room 412, Kansas City, KS 66101.

John C. Cruden,

Chief, Environmental Enforcement Section, Environment and Natural Resources Division.

[FR Doc. 91-29708 Filed 12-11-91; 8:45 am]

BILLING CODE 4410-01-M

Consent Judgment in Action To Enjoin Violations of the Clean Air Act

In accordance with Departmental Policy, 28 CFR 50.7, notice is hereby given that a consent decree in *United States* v. *Arizona Public Service*, No. 91-893PHXRGS, was lodged with the United States District Court for the District of Arizona on December 2, 1991.

The consent decree requires payment of a $1.31 million penalty by defendant for violations of the Clean Air Act, and enjoins further violations of the Clean Air Act. The consent decree provides that defendant will commit to relief necessary to achieve compliance with the Clean Air Act and the consent decree. The decree requires defendant to achieve 95% recovery of emissions monitoring data, to maintain and operate the facilities in a manner consistent with good air pollution control practice for minimizing emissions, and to obtain an installation permit under the prevention of significant deterioration provisions of the Arizona State Implementation Plan.

For thirty (30) days from the date of publication of this notice, the Department of Justice will receive written comments relating to the consent decree. Comments should be addressed to the Assistant Attorney General, Environment and Natural Resources Division, Department of Justice, Washington, DC 20530 and should refer to *United States* v. *Arizona Public Service*, DOJ Ref. No. 90-5-2-1-1200.

The consent decree may be examined at the Office of the United States Attorney, District of Arizona, 230 North First Avenue, Phoenix, Arizona 85025; at the Region IX Office of the Environmental Protection Agency, 75 Hawthorne Street, San Francisco, California 94105; and at the Environmental Enforcement Section Document Center, 601 Pennsylvania Avenue, NW., Box 1097 Washington, DC 20004, tel. (202) 347-2072. A copy of the consent decree may be obtained in person or by mail from the Document Center. In requesting a copy, please tender a check in the amount of $7.25 (25 cents per page reproduction charge) payable to the Consent Decree Library.

Roger Clegg,

Acting Assistant Attorney General, Environment and Natural Resources Division.

[FR Doc. 91-29706 Filed 12-11-91; 8:45 am]

BILLING CODE 4410-01-M

Browning-Ferris Industries of Vermont et al.; Lodging of Consent Decree Pursuant to the Comprehensive Environmental Response, Compensation, and Liability Act and the Resource Conservation and Recovery Act

In accordance with Departmental policy, 28 CFR 50.7, 42 U.S.C. 6973(d), and 42 U.S.C. 9622(i), notice is hereby given that a proposed consent decree in *United States* v. *Browning-Ferris Industries of Vermont, et al.*, Civil Action No. 5:91cv383, has been lodged with the United States District Court for the District of Vermont on November 25, 1991. The United States' complaint, filed at the same time as the consent decree, sought recovery of past and future response costs and injunctive relief under the Comprehensive Environmental Response, Compensation, and Liability Act (CERCLA) and injunctive relief under the Resource Conservation and Recovery Act against Browning-Ferris Industries of Vermont, Inc., Emhart Industries, Inc., Textron, Inc., and the Town of Springfield, Vermont. These defendants are responsible for hazardous substances and hazardous wastes found at the Old Springfield Landfill Site in Springfield, Vermont, a National Priorities List facility.

The consent decree provides that the defendants will perform work to remedy contamination at the Site, in accordance with the Record of Decision (ROD) issued by the U.S. Environmental Protection Agency (EPA) for the second operable unit, and reimburse EPA for all response costs to be incurred by the United States in connection with oversight of the implementation of the second operable unit ROD. The remedial work will include the design and construction of a multi-layer cap, design and construction of two french drains, a

surface water collection system and source control wells, and the design and construction of a landfill gas venting system. The defendants also agree to operate and maintain the remedial action for thirty years.

The Department of Justice will receive for a period of thirty (30) days from the date of this publication comments relating to the proposed consent decree. Comments should be addressed to the Assistant Attorney General of the Environment and Natural Resources Division, Department of Justice, P.O. Box 7611, Ben Franklin Station, Washington, DC 20044, and should refer to *United States* v. *Browning-Ferris Industries of Vermont, et al.*, D.J. Ref. 90-11-3-293B.

The proposed consent decree may be examined at the office of the United States Attorney, District of Vermont, Federal Building, Sixth Floor, 11 Elmwood Street, Burlington, VT 05401; at the Region I Office of the Environmental Protection Agency, One Congress Street, Boston, Massachusetts 02203; and at the Environmental Enforcement Section Document Center, 601 Pennsylvania Avenue, NW., Box 1097, Washington, DC 20004. A copy of the proposed consent decree and appendices can be obtained in person or by mail from the Document Center. In requesting a copy of the consent decree, please enclose a check in the amount of $48.25 (25 cents per page reproduction costs) payable to the Consent Decree Library.

Roger Clegg,

Acting Assistant Attorney General, Environment and Natural Resources Division.

[FR Doc. 91-29707 Filed 12-11-91; 8:45 am]

BILLING CODE 4410-01-M

Drug Enforcement Administration

Norman King Beals, Jr., M.D.; Revocation of Registration

On July 1, 1991, the Deputy Assistant Administrator, Office of Diversion Control, Drug Enforcement Administration (DEA), issued an Order to Show Cause to Norman King Beals, Jr., M.D., of H.R.T. Center, 17150 Euclid Avenue, suite 200, Foundation Valley, California 92708, proposing to revoke his DEA Certificate of Registration, AB0084602, and to deny any pending applications for registration as a practitioner under 21 U.S.C. 823(f). The proposed action was predicated on Dr. Beals' lack of authorization to handle controlled substances in the State of California. 21 U.S.C. 824(a)(3). The Order to Show Cause also alleged that Dr. Beals' continued registration would be inconsistent with the public interest as that term is used in 21 U.S.C. 823(f) and 21 U.S.C. 824(a)(4).

The Order to Show Cause was sent to Dr. Beals by registered mail. More than thirty days have passed since the Order to Show Cause was received by Dr. Beals and the Drug Enforcement Administration has received no response thereto. Pursuant to 21 CFR 1301.54(a) and 1301.54(d), Norman King Beals, Jr., M.D., is deemed to have waived his opportunity for a hearing. Accordingly, the Administrator now enters his final order in this matter without a hearing and based on the investigative file. 21 CFR 1301.57.

The Administrator finds that Dr. Beals had his medical license revoked by the California State Department of Consumer Affairs, Board of Medical Quality Assurance, effective March 21, 1990. This revocation was based upon a written admission/stipulation signed by Dr. Beals on March 1, 1990. Consequently, Dr. Beals is no longer authorized to prescribe, dispense, administer or otherwise handle controlled substances in any schedule in the State of California. The Administrator concludes that the DEA does not have the statutory authority under the Controlled Substances Act to issue or maintain a registration if the applicant or registrant is without state authority to handle controlled substances. See 21 U.S.C. 823(f). The Administrator and his predecessors have consistently so held. See, *Howard J. Reuben, M.D.*, 52 FR 8375 (1987); *Ramon Pla, M.D.*, Docket No. 86-54, FR 41168 (1986); *Dale D. Shahan, D.D.S.*, Docket No. 85-57, 51 FR 23481 (1986); and cases cited therein. Since Dr. Beals lacks state authorization to handle controlled substances, it is not necessary for the Administrator to decide the issue of whether Dr. Beals' continued registration is inconsistent with the public interest at this time.

No evidence of explanation or mitigating circumstances has been offered by Dr. Beals. Therefore, the Administrator concludes that Dr. Beals' DEA Certificate of Registration must be revoked.

Accordingly, the Administrator of the Drug Enforcement Administration, pursuant to the authority vested in him by 21 U.S.C. 823 and 824 and 28 CFR 0.100(b), hereby orders that DEA Certificate of Registration, AB0084602, previously issued to Norman King Beals, Jr., M.D., be, and it hereby is, revoked, and any pending applications for the renewal of such registration, be, and they hereby are, denied. This order is effective December 12, 1991.

Dated: December 5, 1991.

Robert C. Bonner,

Administrator of Drug Enforcement.

[FR Doc. 91-29687 Filed 12-11-91; 8:45 am]

BILLING CODE 4410-09-M

[Docket No. 90-23]

Ronald Reid, R.Ph., d/b/a Reid's Pharmacy III Conditional Registration

On March 12, 1990, the Deputy Assistant Administrator, Office of Diversion Control, Drug Enforcement Administration (DEA), issued an Order to Show Cause to Ronald Reid, R.Ph., d/b/a Reid's Pharmacy III (Respondent), Jct. Hwy. 80 and 22, Martin, Kentucky 41649. The Order to Show Cause proposed to revoke Respondent's DEA Certificate of Registration, AR2091875, and deny any pending applications for renewal of such registration. The statutory basis for the proposed action was that the continued registration of Reid's Pharmacy III would be inconsistent with the public interest as that term is used in 21 U.S.C. 823(f) and 21 U.S.C. 824(a)(4).

By letter dated April 5, 1990, Respondent requested a hearing on the issues raised by the Order to Show Cause, and the matter was docketed before Administrative Law Judge Mary Ellen Bittner. On June 4, 1990, Respondent was granted a stay of these administrative proceedings pending the outcome of a criminal trial involving Mr. Reid. Following further prehearing procedures, a hearing was held in Louisville, Kentucky, on April 9 and 10, 1991. Administrative Law Judge Paul A. Tenney, to whom the case was subsequently transferred, presided.

On July 17, 1991, the Administrative Law Judge issued his opinion and recommended ruling, findings of fact, conclusions of law and decision. On August 5, 1991, the Government filed Exceptions to the Administrative Law Judge's ruling, and Respondent filed a Response to the Exceptions on August 20, 1991. On August 21, 1991, Judge Tenney transmitted the record of these proceedings, including the exceptions and response thereto, to the Administrator. The Administrator has considered the record in its entirety and pursuant to 21 CFR 1316.67 hereby issues his final order in this matter based upon findings of fact and conclusions of law as hereinafter set forth.

Reid's Pharmacy III (Reid's) is located in Martin, Kentucky. During 1987 and 1988, Reid's regularly filled prescriptions from one George A. Sullivan, D.O. In

December 1980, due to a criminal conviction in Tennessee, Dr. Sullivan surrendered his DEA Certificate of Registration. He has not been registered with DEA since March 1981. On October 7, 1987, Dr. Sullivan purchased the Beaver Valley Medical Clinic, located near Reid's, and began issuing invalid prescriptions for controlled substances.

The record reflects that Mr. Reid filled numerous prescriptions authored by Dr. Sullivan, none of which bore a DEA number, as required by 21 CFR 1306.03 and 1306.05. Mr. Reid was visited by DEA Investigators for the first time on March 22, 1988, in conjunction with the investigation of Dr. Sullivan. At that time, Mr. Reid could not produce a DEA number for Dr. Sullivan. Mr. Reid stated at the hearing herein that he thought that he had the DEA number in his computer. As a result of this investigation, Mr. Reid was indicted on recordkeeping violations which ultimately became the basis for this administrative action. On May 21, 1990, the eve of his criminal trial, and at his attorney's urging, Mr. Reid located a prescription dated October 9, 1987, which bore a notation, "Will call on DEA," with a facially valid DEA number on the prescription in Mr. Reid's handwriting.

On June 26, 1990, the Office of the United States Attorney settled the criminal case against Mr. Reid by accepting a $13,000.00 fine and a pledge by the Respondent to install a computer program which would prevent the dispensing of a controlled substance without a DEA number. The evidence before the administrative law judge demonstrates that Mr. Reid has, indeed, installed a new computer system pursuant to the agreement with the United States Attorney. However, the evidence is unclear as to whether Mr. Reid maintains all records by computer or via a manual system.

During their investigation, DEA Investigators also found that Mr. Reid filled prescriptions which were allegedly authorized by Dr. Ira Potter, but signed by his office staff. The administrative law judge noted that testimony by DEA Investigators indicated that had the prescriptions been called in by office staff rather than handwritten, they would have been lawful. This evidence does not vitiate the fact that, again, Mr. Reid acted in contravention of the laws and regulations by which he is bound.

The administrative law judge found that the Government made a prima facie showing of the factors found in 21 U.S.C. 823(f)(2) and (f)(4), as referenced by 21 U.S.C. 824(a)(4). The administrative law judge thus found that Respondent's experience in dispensing with respect to controlled substances, and its compliance with applicable State, Federal, or local laws relating to controlled substances posed serious doubts concerning the Respondent's continued registration. However, in analyzing the remaining factors of 21 U.S.C. 823(f), the administrative law judge found that the Respondent's continued registration was not inconsistent with the public interest. The Government contended, in its Exceptions, that ample grounds for revocation of Respondent's DEA registration exist.

The Administrator finds that Mr. Reid's behavior was clearly violative of the Controlled Substances Act, and that the substantial weight of the evidence would easily justify revocation of Respondent's Certificate of Registration. Mr. Reid continued to fill prescriptions from Dr. Sullivan which were facially invalid and failed to investigate as to whether Dr. Sullivan was registered with DEA. Mr. Reid trusted that his customers brought in valid prescriptions from Dr. Potter's office, regardless of the fact that the prescriptions were not signed by Dr. Potter. Clearly, the Respondent was either unaware of or unconcerned with the laws and regulations under which he is governed. That lack of awareness or lack of concern is not tolerable.

In his discretion, the Administrator agrees to continue the registration of Respondent under the following conditions: (1) Respondent will waive requirements of administrative inspection warrants or notices of inspection; (2) Respondent will at all times maintain readily retrievable hard copy prescriptions with all information required by 21 CFR 1306.05; and (3) Respondent will provide to DEA certification of successful completion of continuing education courses concerning the requirements of laws and regulations relating to controlled substances, such courses to total 30 hours in the coming calendar year. This decision is not meant to encourage or condone the activities of the Respondent. Indeed, the Respondent's behavior is no less dangerous because it was allegedly done without knowledge of its wrongful nature. The Respondent's irresponsibility merits, at the very least, the conditions set forth herein.

Accordingly, the Administrator of the Drug Enforcement Administration, pursuant to the authority vested in him by 21 U.S.C. 823 and 824 and 28 CFR 0.100(b), hereby orders that DEA Certificate of Registration, AR2091875, issued to Ronald Reid, R.Ph., d/b/a Reid's Pharmacy III, continue in good standing pursuant to the conditions recited herein. This order is effective December 12, 1991.

Dated: December 5, 1991.

Robert C. Bonner,

Administrator of Drug Enforcement.

[FR Doc. 91-29688 Filed 12-11-91; 8:45 am]

BILLING CODE 4410-09-M

Mely Salanga, M.D., Revocation of Registration

On July 19, 1991, the Deputy Assistant Administrator, Office of Diversion Control, Drug Enforcement Administration (DEA), issued an Order to Show Cause to Mely Salanga, M.D., of Cerritos, California, proposing to revoke her DEA Certificate of Registration, BS1781839, and to deny any pending applications for registration as a practitioner. The statutory basis for the Order to Show Cause was that Dr. Salanga was no longer authorized by state law to handle controlled substances and thus was ineligible for DEA registration as set forth in 21 U.S.C. 823(f).

Dr. Salanga submitted a reply written on the original Order to Show Cause stating that she did not wish any hearing regarding her DEA certificate. She further asserted that she had lost the original certificate, and that she had not broken any laws concerning her certificate.

Pursuant to 21 CFR 1301.54(c), the Administrator finds that Dr. Salanga has waived her opportunity for a hearing. The Administrator has carefully considered Dr. Salanga's statement and the investigative file in this matter, and enters his final order under the provisions of 21 CFR 1301.57.

Dr. Salanga did not offer any evidence contrary to that recited in the Order to Show Cause. The Administrator finds that on April 9, 1990, the State of California Board of Medical Quality Assurance revoked Dr. Salanga's medical license, based on non-drug related felony convictions. Therefore, Dr. Salanga is not authorized to administer, dispense, prescribe, or otherwise handle controlled substances under the laws of the state in which she was registered by DEA.

The DEA has consistently held that termination of a registrant's state authority to handle controlled substances requires that DEA revoke the registrant's DEA Certificate of Registration. Sam S. Misasi, D.O., 50 FR 11469 (1985); George P. Gotsis, M.D., 49 FR 33750 (1984); Henry Weitz, M.D., 46 FR 34858 (1981).

Based on the foregoing, the Administrator concludes that Dr.

Salanga's registration must be revoked. 21 U.S.C. 823(f) and 824(a)(3). Accordingly, the Administrator of the Drug Enforcement Administration, pursuant to the authority vested in him by 21 U.S.C. 823 and 824 and 28 CFR 0.100(b), hereby orders that DEA Certificate of Registration, BS1781839, previously issued to Mely Salanga, M.D., be, and it hereby is, revoked, and that any pending applications for registration, be, and they hereby are, denied. This order is effective January 13, 1990.

Dated: December 5, 1991.

Robert C. Bonner,

Administrator of Drug Enforcement.

[FR Doc. 91-29689 Filed 12-11-91; 8:45 am]

BILLING CODE 4410-09-M

Veera Sripinyo, M.D., Revocation of Registration

On July 1, 1991, the Deputy Assistant Administrator, Office of Diversion Control, Drug Enforcement Administration (DEA), issued an Order to Show Cause to Veera Sripinyo, M.D. (Respondent), 2811 Hoover Road, suite 3-A, Warren, Michigan 48903, proposing to revoke his DEA Certificate of Registration, AS5477193, and deny any pending application for renewal of such registration as a practitioner under 21 U.S.C. 823(f). The Order to Show Cause alleged that Respondent's continued registration would be inconsistent with the public interest as that term is defined in 21 U.S.C. 823(f) and 824(a)(4).

The Order to Show Cause was sent to Dr. Sripinyo by registered mail, return receipt requested. The return receipt indicates that the Order to Show Cause was received on July 23, 1991. More than thirty days have elapsed since the Order to Show Cause was received and the Drug Enforcement Administration has received no response thereto. Pursuant to 21 CFR 1301.54(a) and 1301.54(d), Dr. Sripinyo is deemed to have waived his opportunity for a hearing. Accordingly, the Administrator now enters his final order in this matter without a hearing and based upon the investigative file. 21 CFR 1301.57.

The Administrator finds that in the Fall of 1986, the DEA initiated an investigation of five medical clinics in the Detroit area. The DEA was informed that these medical clinics were involved with the indiscriminate prescribing of controlled substances and the fraudulent billing to Medicaid. A physician, who was employed at two of the medical clinics, informed DEA that every patient in the clinic received a blood test, that many unnecessary electrocardiograms were ordered and that most patients received controlled substances. The physician stated that the practices of these clinics were outside the course of legitimate medical practice.

The investigation revealed that Respondent was responsible for the McDougall Medical Clinic and D-Community Clinic and for recruiting medical doctors for the five clinics. A physician assistant informed DEA that Respondent would occasionally stop by the clinics but it was the physician assistants who actually saw most of the patients. Respondent saw only about 10% of the patients. Respondent's practice was to ask for blank prescription pads, take them home and pre-sign them. The majority of the time, the physician assistants would fill in the controlled substances on these prescriptions. The physicians were aware of this practice.

The physician assistant also informed DEA that over half of the laboratory tests ordered, and the prescriptions given to patients, were unnecessary, but he followed orders given to him by the clinic's order. The physician assistant stated that the physicians at the clinic knew about the unnecessary tests and prescriptions. However, none of the physicians ever complained about the procedure.

On March 31, 1987, a federal search warrant was served at McDougall Medical Clinic where Respondent was employed. During the execution of the search warrant, blank prescriptions were found in a steel vault. These prescriptions were all pre-signed by Respondent.

On May 7, 1987, DEA Investigators interviewed another physician employed at Universal Medical Clinic. The physician stated that he was recruited by Respondent and that Respondent explained that he would basically be signing blank prescriptions and reviewing and signing patient charts after the physician assistant conducted the actual examination. The physician also stated that full blood work was ordered for every patient, as well as electrocardiograms. Most of the patient charts reflected that the patient suffered from back and neck pain. The physician advised that he spoke with Respondent and one of the physician assistants and explained that he did not like what was going on at the clinics. His complaints were ignored. The physician then terminated his employment with the clinics.

The Administrator also finds that on May 5, 1988, a DEA Investigator and an FBI Agent interviewed Respondent. Respondent stated that from the beginning he was told by a physician assistant that all the patients had to get their blood drawn.

At times there would be 60 to 80 patients a day and all had their blood drawn without exception. Respondent also stated that although the physician assistants were not performing proper examinations of the patients, he did nothing about it. Respondent admitted to pre-signing large numbers of blank prescriptions.

On July 7, 1988, the DEA Investigator and the FBI Agent interviewed a former patient of the McDougall Medical Clinic. The patient stated that the reason people went to the clinic was to obtain pain pills, mainly Tylenol #4 and Empirin with codeine. The patient advised that all the other people in the clinic were "junkies and dopers" and their only reason for coming to the clinic was to get pills.

Parallel to the investigation of the Detroit clinics, the FBI initiated an undercover investigation of prescribing at Respondent's private medical office. Between May 16, 1989 and December 28, 1989, nine undercover purchases were made by an FBI Agent. During the Agent's first visit, the receptionist took his blood pressure and the Agent paid $70.00. Respondent then listened to the Agent's heart and checked him for a hernia. Without further examination, Respondent provided prescriptions for Tylenol #4, Valium, Didrex and Ambenyl Expectorant. On eight other occasions the Agent, acting in an undercover capacity, visited Respondent's office. Each time, without benefit of a medical examination, the Agent received prescriptions for Tylenol #4, Valium, Didrex and Ambenyl Expectorant. The prescriptions had been written out and pre-signed prior to the Agent's visits and Respondent filled in only the dates on those occasions.

Further, the Administrator finds that, from January 1987 to November 1988, Respondent wrote 4,600 prescriptions totalling 137,181 dosage units of controlled substances, mainly Didrex, Tylenol #4, Valium, Doriden, and Tussionex. The prescriptions bearing Respondent's name were computerized, totaled and sorted by patient. The prescriptions were written in combinations of highly abused substances and were mostly written for individuals known to be drug abusers. The Administrator finds that the vast majority of prescriptions written by the Respondent, and all of those issued in Respondent's name on prescription forms pre-signed by him, were without

legitimate medical purpose and were thus issued in violation of the law.

In evaluating whether Respondent's continued registration by the Drug Enforcement Administration would be inconsistent with the public interest, the Administrator considers the factors enumerated in 21 U.S.C. 823(f) and 21 U.S.C. 824(a)(4). They are as follows: (1) The recommendation of the appropriate State licensing board or professional disciplinary authority; (2) the applicant's [or registrant's] experience in dispensing, or conducting research with respect to controlled substances; (3) the applicant's (or registrant's) conviction record under Federal or State laws relating to the manufacture, distribution, or dispensing of controlled substances; (4) compliance with applicable State, Federal, or local laws relating to controlled substances; and (5) such other conduct which may threaten the public health and safety.

In determining whether a registrant's continued registration is inconsistent with the public interest, the Administrator is not required to make findings with respect to each of the factors listed above. Instead, the Administrator has discretion to give each factor the weight he deems appropriate, depending upon the facts and circumstances of each case. See, Henry J. Schwarz, Jr., M.D., Docket No. 88–42, 54 FR 16422 (1989); Neveille H. Williams, D.D.S., Docket No. 87–47, 53 FR 23465 (1988); David E. Trawick, D.D.S., Docket No. 86–69, 53 FR 5326 (1988).

In this case, the second, fourth and fifth factors under 21 U.S.C. 823(f) are of importance in evaluating whether Dr. Sripinyo's continued registration would be contrary to the public interest. The Administrator finds no evidence which would support the continued registration of Dr. Sripinyo. On the contrary, the evidence relating to Dr. Sripinyo's experience in handling controlled substances is overwhelmingly negative.

Based on the foregoing, the Administrator concludes that Dr. Sripinyo's continued registration would be inconsistent with the public interest. Dr. Sripinyo has exhibited a total disregard for controlled substance laws and regulations. He has abused his registration and the trust placed in him as a registrant and as a physician. He has demonstrated that he can no longer be entrusted with a registration to handle controlled substances.

Accordingly, the Administrator of the Drug Enforcement Administration, pursuant to the authority vested in him by 21 U.S.C. 823 and 824 and 28 CFR 0.100(b), hereby orders that DEA Certificate of Registration, AS5477193, previously issued to Veera Sripinyo, M.D., be, and it hereby is, revoked. Any pending applications for renewal of such registration are hereby denied. This order is effective January, 13, 1992.

Dated: December 5, 1991.

Robert C. Bonner,

Administrator of Drug Enforcement.

[FR Doc. 91–29685 Filed 12–11–91; 8:45 am]

BILLING CODE 4410–09–M

DEPARTMENT OF LABOR

Pension and Welfare Benefits Administration

[Application No. D–8470, et al.]

Proposed Exemptions; FDC Profit Sharing Trust, et al.

AGENCY: Pension and Welfare Benefits Administration, Labor.

ACTION: Notice of proposed exemptions.

SUMMARY: This document contains notices of pendency before the Department of Labor (the Department) of proposed exemptions from certain of the prohibited transaction restriction of the Employee Retirement Income Security Act of 1974 (the Act) and/or the Internal Revenue Code of 1986 (the Code).

Written Comments and Hearing Requests

All interested persons are invited to submit written comments or request for a hearing on the pending exemptions, unless otherwise stated in the Notice of Proposed Exemption, within 45 days from the date of publication of this **Federal Register** Notice. Comments and request for a hearing should state: (1) The name, address, and telephone number of the person making the comment or request, and (2) the nature of the person's interest in the exemption and the manner in which the person would be adversely affected by the exemption. A request for a hearing must also state the issues to be addressed and include a general description of the evidence to be presented at the hearing. A request for a hearing must also state the issues to be addressed and include a general description of the evidence to be presented at the hearing.

ADDRESSES: All written comments and request for a hearing (at least three copies) should be sent to the Pension and Welfare Benefits Administration, Office of Exemption Determinations, room N–5649, U.S. Department of Labor, 200 Constitution Avenue, NW., Washington, DC 20210. Attention: Application No. stated in each Notice of Proposed Exemption. The applications for exemption and the comments received will be available for public inspection in the Public Documents Room of Pension and Welfare Benefits Administration, U.S. Department of Labor, room N–5507, 200 Constitution Avenue, NW., Washington, DC 20210.

Notice to Interested Persons

Notice of the proposed exemptions will be provided to all interested persons in the manner agreed upon by the applicant and the Department within 15 days of the date of publication in the Federal Register. Such notice shall include a copy of the notice of proposed exemption as published in the **Federal Register** and shall inform interested persons of their right to comment and to request a hearing (where appropriate).

SUPPLEMENTARY INFORMATION: The proposed exemptions were requested in applications filed pursuant to section 408(a) of the Act and/or section 4975(c)(2) of the Code, and in accordance with procedures set forth in 29 CFR part 2570, subpart B (55 FR 32836, 32847, August 10, 1990). Effective December 31, 1978, section 102 of Reorganization Plan No. 4 of 1978 (43 FR 47713, October 17, 1978) transferred the authority of the Secretary of the Treasury to issue exemptions of the type requested to the Secretary of Labor. Therefore, these notices of proposed exemption are issued solely by the Department.

The applications contain representations with regard to the proposed exemptions which are summarized below. Interested persons are referred to the applications on file with the Department for a complete statement of the facts and representations.

FDC Profit Sharing Trust (the Plan) Located in Temple, Texas

[Exemption Application No. D–8470]

Proposed Exemption

The Department is considering granting an exemption under the authority of section 408(a) of the Act and section 4975(c)(2) of the Code in accordance with the procedures set forth in ERISA Procedure 75–1 (40 FR 18471, April 28, 1975). If the exemption is granted, the restrictions of section 406(a), 406(b)(1) and 406(b)(2) of the Act and the sanctions resulting from the application of section 4975 of the Code by reason of section 4975(c)(1) (A) through (E) of the Code shall not apply by the proposed sale by the Plan of undeveloped real property (the Property) to Mr. Robert C. Jones, a party in

interest with respect to the Plan provided that the Plan receives the greater of $40,000 or the fair market value of the Property at the time of the transaction.

Summary of Facts and Representations

1. The Plan is the profit sharing plan of Ferrel Distributing Company (the Employer) and has 28 participants. The Employer is located in Temple, Texas. As of September 30, 1990, the value of the Plan's assets totaled $1,490,000. The trustees of the Plan are Jerry D. Ferrel, Sarah B. Ferrel and Robert C. Jones (the Trustees).

2. The property is comprised of 55 acres of unimproved land located in Bell County, Texas. In 1988, the Trustees wanted to invest approximately $50,000 in real property and, on June 16, 1988, the Trustees purchased the Property for $54,875. The Property was selected by the Trustees because Mr. Jones's son lived on the land adjacent to the Property, and Mr. Jones could serve as caretaker of the Property.[1] The Property has been leased to cattlemen for grazing purposes for $800 a year.

3. The Trustees now wish to sell the Property because property values in Texas, and particularly in Bell County, have been adversely affected due to the large exodus of the area's population caused by troop reductions by the US Army at Fort Hood, Texas. The Trustees believe that property values in the area will continue to depreciate and represent that the sale of the property will prevent any further loss to the Plan, and is in the best interest of the Plan.

On January 26, 1991, an independent and qualified real estate appraiser, Dorothy Darden calculated that the Property's fair market value equaled $37,689.50. Ms. Darden based her appraisal methodology and calculations on the comparable sales approach. In her appraisal, Ms. Darden notes that land values in Bell County, Texas have been rapidly depreciating since 1983 and that they are not expected to appreciate in the next five years. She also states that lending institutions are not loaning money for the purchase of unimproved land due to poor economic conditions in Texas.

4. On March 1, 1991, the applicant listed the Property for sale with the real estate firm of Elbert Aldrich, Inc. at a selling price equal to the fair market value of $37,698.50. The Property remained on the market through June 28, 1991, and was not sold. After unsuccessful efforts to sell the Property to the unrelated third parties, the Trustees propose to sell the Property to Mr. Jones. Mr. Jones has offered the Plan $40,000 for the Property. The Plan will pay no real estate fees or commissions associated with the sale of the Property. Ms. Darden represents that the value of the Property is not enhanced due to the fact that Mr. Jones will own contiguous property with his son. Ms. Darden states that both pieces of property are ranch land with no improvements, except access roads which are maintained by the county. Ms. Darden represents that the acreage at the back of the Property is in a flood plain, and cannot be used due to frequent flooding.

5. In summary, it is represented that the proposed transaction will satisfy the statutory criteria of section 408(a) of the Act and section 4975(c)(2) of the Code because: (a) The sale will be a one-time transaction for cash; (b) the Property has been appraised by an independent and qualified real estate appraiser; (c) the Plan will not pay any real estate fees or commissions associated with the proposed sale; (d) the proposed sale will allow the Plan to divest itself of an asset which is continuing to depreciate; and (e) the Plan will receive an amount equal to the greater of $40,000 or the fair market value of the Property at the time of the transaction.

FOR FURTHER INFORMATION CONTACT: Allison Padams of the Department, telephone (202) 523-8971. (This is not a toll-free number.)

Asarco, Incorporated (Asarco), Located in New York, New York

[Application No. D-8869]

Proposed Exemption

The Department is considering granting an exemption under the authority of section 408(a) of the Act and section 4975(c)(2) of the Code and in accordance with the procedures set forth in 29 CFR part 2570, subpart B (55 32836, 32847, August 10, 1990). If the exemption is granted, the restrictions of sections 406(a), 406(b)(1) and (b)(2) of the Act and the sanctions resulting from the application of section 4975 of the Code, by reason of section 4975(c)(1)(A) through (E) of the Code, shall not apply to the proposed assignment by the Savings Plan of Asarco Incorporated and Participating Subsidiaries (the Plan) of the Plan's interest in a guaranteed investment contract (the E.L. GIC) issued by Executive Life Insurance Company of California (Executive Life) to Asarco, the sponsor of the Plan, in exchange for certain payments by Asarco to the Plan; provided that (1) all the terms of such transaction are no less favorable to the Plan than those which the Plan could obtain in an arm's-length transaction with an unrelated party, (2) the Plan's liability to Asarco resulting from such assignment will in no event exceed the amounts actually received from Executive Life, state guaranty funds and other responsible third parties, and (3) the assignment and transfer of amounts to Asarco will not exceed the local amount transferred by Asarco to the Plan with respect to the E.L. GIC, plus an interest which may accrue on such amounts determined at the Blended Rate following December 31, 1991, but prior to its final disposition.

EFFECTIVE DATE: This exemption, if granted, will be effective as of December 2, 1991.

Summary of Facts and Representations

1. Asarco is a New Jersey public corporation with its corporate headquarters in New York, New York. The Plan is a defined contribution profit sharing plan with 2,253 participants and total assets of $66,427,994.73 as of September 30, 1991. Authority with respect to the investment of Plan assets is exercised by the named fiduciary under the Plan, a committee (the Committee) comprised of three officers and/or directors of Asarco appointed by Asarco's board of directors.

2. The Plan provides for individually-directed participant accounts (the Accounts). Participants may invest their Account balances in one or more of four Plan funds: a fixed income fund (the FI Fund), an equity fund, a company stock fund, and a money market fund. Plan participants may elect to transfer the assets of their own Accounts among the funds in accordance with provisions in the Plan document.

The FI Fund, which earns income for its participating Accounts by investing in guaranteed investment contracts (the GICs) issued by various insurance companies, is divided into two portions: (A) In the blended-rate portion (the Blended Portion), the GICs are commingled for the purpose of determining the rate of interest credited to participating Accounts. A blended interest rate (the Blended Rate) is computed by combining all GICs held in the Blended Portion. As of October 21, 1991, the Blended Portion held nine GICs yielding a projected Blended Rate of eight percent for 1991. The actual Blended Rate for 1991 will depend on various factors such as the possible addition or termination of GICs during the remainder of the year. (B) In the class-year portion of the FI Fund (the Class Portion), all Account assets

[1] The Department is expressing no opinions as to whether the decision made by the Trustees to purchase the Property violated any provision of part 4 of Title I of the Act.

allocated to the FI Fund during a calendar year are invested in a single GIC issued in that year. The rate of interest credited to the Accounts participating during the year is determined solely by the terms of the GIC purchased that year. Asarco represents that the Committee determined effective January 1, 1989 that, in order to reduce the risk associated with investing assets in a single contract, no contracts would be added to the Class Portion and that, accordingly, all Account contributions and transfers to the FI Fund after 1988 have been invested in the GICs of the Blended Portion.

3. Among the assets in the Class Portion of the FI Fund is an interest in the E.L. GIC, which is contract number GA–CG0127103A issued by Executive Life on April 21, 1988. The E.L. GIC is held in trust by a collective investment fund (the Trust) established by State Street Bank and Trust Company on behalf of qualified employees benefit plans. All Account contributions and transfers to the FI Fund in 1988 where invested in the E.L. GIC. The E.L. GIC provides for a guaranteed rate of interest of 9.55 percent, with a maturity date of December 31, 1992. Withdrawals from the E.L. GIC by the Plan are provided for to enable distributions upon employment termination, in-service withdrawals, participant loans, and to enable Account transfers between Plan funds as directed by Plan participants (collectively, the GIC Withdrawals). As of September 30, 1991, the Plan's interest in the E.L. GIC and an accumulated book value [2] of $3,781,670.61, representing approximately 5.7 percent of the Plan's total assets and approximately 10.2 percent of the assets in the FI fund.

4. On April 11, 1991, Executive Life was placed into conservatorship by the insurance commissioner of the State of California. Asarco represents that Executive Life has suspended payments on its GICs, including the E.L. GIC held by the Trust, and that under the prevailing circumstances it is unlikely that Executive Life will make timely payments or provide the full amounts of principal and interest due with respect to its outstanding GICs. Account assets attributable to the FI Fund's investment in the E.L. GIC are currently frozen. As a result, no GIC Withdrawals involving Accounts invested in the E.L. GIC are permitted. Asarco wishes to facilitate the resumption of the GIC Withdrawals and to protect the affected Plan participants from the risks and uncertainties of continued investment in the E.L. GIC. Because the E.L. GIC is held by the Trust instead of directly by the Plan, and because state guaranty funds may not continue to cover the E.L. GIC after its transfer to a non-plan transferee, Asarco represents that it desires to assist affected Plan participants by a method which would not involve any transfer of title of the GIC itself. Accordingly, Asarco proposes that the Plan assign its rights with respect to the E.L. GIC to Asarco in exchange for Asarco's payments to the Plan to enable the Plan to honor GIC Withdrawal requests and is requesting an exemption for this transaction under the terms and conditions described herein.

5. The terms and conditions of the Plan's assignment to Asarco with respect to the E.L. GIC will be embodied in a written assignment agreement (the Agreement). The Plan will assign to Asarco the Plan's rights to all amounts payable with respect to the E.L. GIC, including all rights of recovery against state guaranty funds and other responsible third parties with respect to the E.L. GIC.

Pursuant to the Agreement, Asarco will make the GIC Withdrawal payments to the Plan. GIC Withdrawal payments made on or before December 31, 1991 will be based on the accumulated book value of the E.L. GIC as of the date of such payments. GIC Withdrawal payments made after December 31, 1991 will be based on the accumulated book value of the E.L. GIC as of December 31, 1991 plus an agreed upon interest rate which will be equal to the Blended Rate through the date of payment. Asarco represents that its payment of GIC Withdrawals on the basis of the E.L. GIC's accumulated book value as of December 31, 1991, plus interest from such date at a rate equal to the Blended Rate (the Asarco Obligation), will equal an amount which is no less than the fair market value of the Plan's interests in the E.L. GIC.

Asarco's obligation to make the payments to the Plan for GIC Withdrawals, which may extend beyond the E.L. GIC's maturity on December 31, 1992, will continue until all affected participants' Accounts have been distributed or transferred out of the FI Fund or, if earlier, at such time as the Plan has received from all sources, including Asarco, Executive Life and third parties, an amount equal to the Asarco Obligation which has accrued up to that point in time. The Agreement enables Asarco to make a payment to the Plan at any time in an amount sufficient to complete payment of the Asarco Obligation and thereby terminate Asarco's future obligations under the Agreement.

Pursuant to the Agreement, in repayment of Asarco's GIC Withdrawal payments, the Plan will transfer to Asarco amounts received from Executive Life, state guaranty funds and other responsible third parties with respect to the E.L. GIC (the Plan Transfers). The amount of Plan Transfers will not exceed the total amount transferred by Asarco to the Plan with respect to the E.L. GIC, plus any interest which may accrue on such amounts at the Blended Rate following December 31, 1991 but prior to its final disposition. In no event will the Plan's liability to Asarco exceed the amounts actually recovered by the Plan from Executive Life, state guaranty funds and other responsible third parties.

6. The Committee has designated Wachovia Bank of North Carolina, N.A. (Wachovia) as an independent fiduciary to represent the interests of the Plan with respect to the transaction. Wachovia represents that it has extensive fiduciary experience under the Act and that it understands and acknowledges its duties, responsibilities and liabilities as a fiduciary under the Act. Wachovia will have authority and responsibility to monitor the calculation of the Blended Rate, Asarco's payments of GIC Withdrawals, and the Plan Transfers to Asarco, and to take any actions appropriate to safeguard the Plan's interests in the transaction. Wachovia represents that in its capacity as fiduciary on behalf of the Plan it has reviewed and considered the transaction in the context of all surrounding circumstances, including the Plan's needs, the prospects for Executive Life's ability to make any further payments on the E.L. GIC, and the ability of Asarco to fulfill its proposed obligations. Based on such review and consideration, during which Wachovia determined that there is no secondary market for GICs such as the E.L. GIC, Wachovia finds that the transaction is in the best interests of the Plan. Wachovia represents that the total amount to be received by the Plan pursuant to the Agreement exceeds the fair market value of the Plan's interest in the E.L. GIC.

7. Asarco represents that several Plan participants with Accounts invested in the E.L. GIC terminated employment during 1991 and received distributions of their total accrued Plan benefits, less the amounts attributable to the GIC. Asarco

[2] ASARCO represents that the accumulated book value of a GIC is equal to the total premium deposits made under the contract plus accrued interest less any withdrawals made under the contrat.

maintains that in order to avoid potentially serious adverse tax consequences for these participants, the amounts due these affected participants under the E.L. GIC must be distributed before the end of 1991. Accordingly, Asarco requests that the exemption be effective as of December 2, 1991 in order to allow sufficient time for benefits to be transferred to the Plan by Asarco in accordance with the Assignment and thereafter distributed to the affected participants before the end of 1991.

8. In summary, the applicant represents that the proposed transaction satisfies the criteria of section 408(a) of the Act for the following reasons: (1) the Plan will be relieved of any further risk or uncertainty with respect to payments due from Executive Life under the E.L. GIC; (2) The proposed transaction will enable the Plan to resume GIC Withdrawals; (3) The Plan will be credited with the full accumulated book value of the E.L. GIC as of December 31, 1991 together with interest thereafter at the Blended Rate; (4) Wachovia, as an independent fiduciary on behalf of the Plan, will monitor Asarco's performance of its obligations to make payments to the Plan with respect to the E.L. GIC; and (5) Wachovia has determined that the Plan will receive a total amount if excess of the fair market value of the Plan's interests in the E.L. GIC, and that the transaction is in the best interests of the Plan participants.

FOR FURTHER INFORMATION CONTACT: Ronald Willett of the Department, telephone (202) 523–8881. (This is not a toll-free number.)

ASC, Inc. Individual Deferred Earnings Accounts Savings Plan (the Plan) Located in Southgate, Michigan

[Application No. D–8857]

Proposed Exemption

The Department is considering granting an exemption under the authority of section 408(a) of the Act and section 4975(c)(2) of the Code and in accordance with the procedures set forth in 29 CFR part 2570, subpart B (55 FR 32836, August 10, 1990). If the exemption is granted the restrictions of section 406(a), 406 (b)(1) and (b)(2) of the Act and the sanctions resulting from the application of section 4975 of the Code, by reason of section 4975(c)(1) (A) through (E) of the Code, shall not apply to the following transactions:

(1) Interest-free extensions of credit to the Plan (the Advances) by ASC Incorporated (ASC), the sponsor of the Plan, with respect to a group annuity contract (the GAC) issued by the Mutual Benefit Insurance Company of Newark, New Jersey (Mutual Benefit); provided that (a) no interest and/or expenses are paid by the Plan; (b) the proceeds of the Advances are used only in lieu of payments due from Mutual Benefit with respect to the GAC; and (c) repayment of the Advances will be restricted to proceeds from the proposed sale of the GAC to ASC; and

(2) The proposed sale of the GAC by the Plan to ASC; provided that the purchase price for the GAC equals or exceeds the fair market value of the GAC as of the date of sale.

EFFECTIVE DATE: This exemption, if granted, will be effective as of September 10, 1991.

Summary of Facts and Representations

1. The Plan is a defined contribution profit-sharing plan which provides for individually-directed participant accounts. As of July 31, 1991, the Plan had approximately 1,858 participants and total assets of approximately $8,378,031. The trustee of the Plan is Manufacturers National Bank of Detroit (the Trustee). ASC is a publicly-owned Michigan corporation with its principal place of business in Southgate, Michigan and is engaged in the manufacture of automotive sunroofs, automobile conversions and soft trim products, and, through its affiliates, in the operation of newspaper publishing, graphic printing, automobile dealerships and a hotel.

2. On December 30, 1986 an ASC affiliate acquired all of the business and assets of Colamco, Inc. (Colamco), which had previously adopted the Colamco, Inc. Profit Sharing and 401(k) Plan (the Colamco Plan). Subsequently, all Colamco employees became employees of ASC and the assets and liabilities of the Colamco Plan were transferred to the Plan effective January 1, 1989. The assets transferred from the Colamco Plan to the Plan consisted of the GAC, on which Mutual Benefit has suspended payment. ASC is requesting an exemption, under the terms and conditions described herein, for past and proposed extensions of credit to the Plan for amounts due from Mutual Benefit with respect to the GAC and for ASC's proposed purchase of the GAC from the Plan.

3. Participant contributions to the Plan, including those of former Colmaco employees (the Colamco Participants), are maintained in individually-directed accounts (the Accounts) and are invested according to each participant's directions into any of three investment funds (the Funds). Among the Funds is a guaranteed investment fund (the GI Fund), which includes the GAC among its assets. The GI Fund also holds guaranteed investment contracts managed by the Trustee, although the Trustee continues to maintain separate accounting of the GAC for the Colamco Participants. Only Colmaco Participants have interests in the GAC. ASC represents that as of September 27, 1991 there were 208 Colamco Participants.

Four potential events under the Plan require an asset withdrawal from a Fund (Fund Withdrawals), including the GI Fund: (1) inter-fund transfers upon participant direction; (2) distributions upon termination of employment; (3) hardship or ordinary withdrawals during active employment; and (4) participant loans. A Fund Withdrawal from the GI Fund with respect to the Account of any Colamco Participant invested in the GI Fund requires a withdrawal from the GAC.

4. The trustees of the Colamco Plan entered into the GAC with Mutual Benefit on January 1, 1985. Contributions paid into the GAC were allocated to a separate sub-fund for each calendar year. Each sub-fund becomes established upon the initial contribution paid into the GAC in the calendar year. The GAC provides that the amount in each sub-fund earns a fixed rate of interest, which becomes fixed upon the establishment of the sub-fund and is effective upon the sub-fund's establishment date through the sub-fund's maturity on the fifth anniversary of the establishment date. Mutual Benefit maintained a "fixed accumulation account" (the GAC Accounts) for each Colamco Participant with respect to the contributions to and earnings under the GAC. The value of any Colamco Participant's GAC Account as of any date equaled the sum of the contributions allocated to that account plus interest credited at the rate fixed for each sub-fund, less any amounts withdrawn. ASC represents that upon the Colamco Plan's merger into the Plan, contributions were no longer made to the GAC on behalf of Colamco Participants and Mutual Benefit ceased maintenance of individual accounts for the Colamco Participants. At that time, Mutual Benefit commenced crediting and reporting interest earned under the GAC on a total-concept basis, treating the total balance of contributions deposited under the GAC as a lump sum. The discontinuation of contributions to the GAC had the effect of concelling the GAC with respect to years beginning on and after January 1, 1989, and the last contribution to the GAC was effective December 31, 1988. ASC represents that the 1985 sub-fund matured and was paid to the Plan in full by Mutual Benefit in 1990, and that the 1987 and 1988 sub-funds have been liquidated by the Plan

pursuant to an agreement with Mutual Benefit. The only remaining sub-fund is the one established for 1986, with a maturity date of December 31, 1991. ASC represents that under these circumstances, the GAC currently operates like a guaranteed investment contract, earning fixed interest on a solitary sub-fund until maturity, and that Mutual Benefit no longer maintains, nor has any obligation to maintain, the GAC Accounts or pays the benefit of any particular Colamco Participant.

5. On July 16, 1991 Mutual Benefit was placed into conservatorship by the New Jersey Insurance Commissioner. ASC represents that Mutual Benefit has ceased payments on its group annuity contracts, including the GAC, and that under the prevailing conditions it is doubtful that Mutual Benefit will make timely payment to the GI Fund pursuant to the GAC for (1) Fund Withdrawals, or (2) the maturity payment due December 31, 1991. To protect the Colmaco Participants from any adverse effects of nonpayment by Mutual Benefit on the GAC, ASC proposes the Advances as interest-free loans to the Plan at such times and in such amounts as would be required to be paid under the terms of the GAC. ASC represents that the Advances are proposed as an effective method for placing the Plan in the same financial position it would have been in without Mutual Benefit's adverse developments, while ensuring preservation of the Plan's rights of recovery from Mutual Benefit or any sources making payments on behalf of Mutual Benefit.

The Advances will be made pursuant to a written agreement between ASC and the Plan (the Agreement) embodying the terms of the extension of credit and its repayment. An Advance will be made by ASC if, at any time, Mutual Benefit fails to pay to the Plan any amounts due in accordance with the terms of the GAC. ASC will advance to the Plan the difference between the amount due to the Plan under the GAC and the amount paid to the Plan, if any, when such payment is due under the GAC. Repayment of the Advances is limited to the proceeds of the Plan's proposed sale of the GAC, discussed below.

5. In order to eliminate the GAC as a potential risk to the Plan, ASC proposes to purchase the GAC from the Plan after the requested exemption, if granted, is published in the Federal Register. ASC will pay the Plan cash for the GAC in the amount of the GAC's book value as of the date of such purchase, less the total amount of Advances made to the Plan by ASC with respect to the GAC. ASC represents that the book value of the GAC is the amount of total deposits thereunder, plus accrued interest through the date of sale, less any withdrawals previously made under the GAC. ASC represents that the book value of the GAC as of October 31, 1991 is $331,632.24. ASC represents that the Plan will not incur any expenses nor sustain any losses with respect to the proposed sale of the GAC to ASC. The Trustee represents that book value is the appropriate valuation of the GAC, concurring in ASC's definition of the book value, and that the amount the Plan will receive upon the GAC's sale will equal or exceed that fair market value of the GAC. The Trustee further represents that the Plan's proposed sale of the GAC to ASC is in the best interests and protective of the Plan's participants and beneficiaries because it enables the Plan to avoid any risk associated with continued holding of the GAC and it preserves the participants' rights to transfer amount the Funds and to obtain distributions and loans.

6. In order to accommodate the asset withdrawal events that have arisen since Mutual Benefit ceased payments with respect to the GAC, ASC arranged with the Trustee to commence the Advances on September 10, 1991 with an advance in the amount of $32,452.41. For this reason, ASC requests that the exemption be effective as of September 10, 1991 and that it provide exemptive relief for any additional Advances which may be necessary before publication of the requested exemption, if granted, in the Federal Register.

7. In summary, the applicant represents that the proposed transactions satisfy the criteria of section 408(a) of the Act for the following reasons: (1) The Advances will preserve the Plan's rights with respect to the GAC and enable the Plan to remain in the same position which would result from full and timely performance under the GAC by Mutual Benefit; (2) The Plan will pay no interest or incur any expenses with respect to the transactions; (3) Repayment of the Advances will be restricted to payments by or on behalf of Mutual Benefit with respect to the GAC and no other Plan assets will be involved in the transactions; (4) Repayment of the Advances will be waived to the extent the Plan recoups less from or on behalf of Mutual Benefit on the disposition of the GAC than the total amount of the Advances; (5) In the sale of the GAC, the Plan will receive an amount which is equal to or in excess of the GAC's fair market value; (6) The sale of the GAC will enable the Plan to avoid any risk associated with continued holding of the GAC; and (7) The Trustee has determined that the proposed sale of the GAC to the Employer is in the best interest and protective of the participants and beneficiaries of the Plan.

FOR FURTHER INFORMATION CONTACT: Ronald Willett of the Department (202) 523-8881. (This is not a toll-free number.)

Fluidyne Engineering Corporation Pension Trust (the Plan) Located in Minneapolis, Minnesota

[Application No. D-8770]

Proposed Exemption

The Department is considering granting an exemption under the authority of section 408(a) of the Act and section 4975(c)(2) of the Code and in accordance with the procedures set forth in 29 CFR part 2570, subpart B (55 FR 32836, 32847, August 10, 1990). If the exemption is granted the restrictions of section 406(a), (b)(1), and (b)(2) of the Act and the sanctions resulting from the application of section 4975 of the Code, by reason of section 4975(c)(1) (A) through (E) of the Code, shall not apply to: (a) the loan of $500,000 (the Loan) by the Plan to Fluidyne Engineering Corporation (the Employer), a party in interest with respect to the Plan, provided that no more than 25% of the assets of the Plan are involved in the Loan; and provided further that the terms and conditions of the Loan are no less favorable to the Plan than those obtainable in an arm's-length transaction involving an unrelated third party; and (b) the personal guaranty by certain officers of the Employer of fifty percent (50%) of the outstanding amount of the Loan.

Summary of Facts and Representations

1. The Plan is a defined benefit plan sponsored by the Employer for its eligible employees. As of December 31, 1990, the Plan had assets of approximately $3,204,702. As of January 1, 1991, the Plan had 193 participants, consisting of active employees, vested terminated employees, retirees, and individuals on leave of absence.

2. The First Trust National Association (First Trust), located in St. Paul, Minnesota, serves as the trustee for the assets of the Plan and will serve as independent fiduciary on behalf of the Plan with respect to the proposed transactions. After receiving advice of counsel, First Trust represents that it understands and accepts its duties and responsibilities as a fiduciary under the Act. First Trust represents that it has

eighty (80) years of experience as a provider of trustee services, including record-keeping, administering participant loans, and making benefit distributions. First Trust has relationships, mostly of a fiduciary nature, with approximately 800 qualified employee benefit plans and handles approximately $9 billion in qualified plan assets. First Trust maintains an experienced employee benefit staff of 180 employees of which 18 are CPAs, attorneys, or certified employee benefit specialists. First Trust is independent in that it has no business relationships with the Employer, other than its relationship as trustee of the Plan, and has no overlapping directorships, with the Employer or any of its affiliates.

3. The Employer is engaged in the design, development, and use of test facilities for aerodynamic testing, power generation, and energy conversion equipment and has offices at 623 Marquette Ave., Suite 735, in Minneapolis, Minnesota. The Employer, as the applicant for exemptive relief, proposes to borrow $500,000 from the Plan. The Employer represents that the Plan will not incur any fees, commissions, or other costs as a result of this application or the proposed transactions.

4. The Loan will be amortized in equal monthly installment payments of principal and interest over a period of five (5) years at the annual interest rate of 1.75%, above the referenced interest rate used by First Trust for its variable rate commercial loans. It is represented that currently the referenced rate is the prime rate. The interest rate will be adjusted annually, effective each February 15th, to reflect any change in the referenced interest rate, as of each January 15th. The installment payments are due on the fifteenth (15th) of each month, and if not paid within five (5) days of such date, a five percent (5%) late charge will be added to the amount due. The Loan will be evidenced by a promissory note and will be secured by a recorded first mortgage on a certain parcel of improved real property (the Property) which is owned and completely occupied by the Employer. It is represented that there are no other encumbrances on the Property. Further, it is represented that at closing: (a) The services of a title company will be retained to ensure that the Plan's first mortgage interest in the Property will be properly recorded and will be subordinate to no other security interest, and (b) the Employer will deliver the customary closing documents, including a satisfactory legal opinion, title insurance with the appropriate endorsements, and an environmental audit.

In addition to the Property serving as collateral, it is represented that certain officers of the Employer will execute a personal guaranty of fifty percent (50%) of the outstanding amount of the Loan. First Trust, on behalf of the Plan negotiated at arm's-length the terms of the Loan with the Employer and accepted a guaranty of fifty percent (50%), rather than 100%, of the outstanding amount of the Loan as adequate collateral when combined with a first mortgage security interest in the Property. It is further represented that, as of the date the Loan is entered, financial statements will be obtained from the officers guarantying the Loan in order to verify that the value of their aggregate personal assets exceeds $250,000, exclusive of such officers' homesteads and holdings in the Employer.

5. The Property which serves in part as collateral for the Loan is located at 5900 Olson Memorial Highway, Hennepin County, Golden Valley, Minnesota. The Property consists of an unimproved rectangular parcel of approximately 1.01 acres suitable for a surface parking lot, and an improved parcel of approximately 2.15 acres which is irregular in shape. The improvement is described as two-story masonry, office-engineering styled building, constructed in 1962. It is represented that both parcels are fully serviced with utilities, accessed by improved streets, and are zoned for industrial or parking uses.

6. On September 17, 1990, N. Craig Johnson, MAI, a qualified independent real estate appraiser and consultant, appraised the Property at $1,150,000. Subsequently, at the request of First Trust, Towle Real Estate Company (Towle) estimated that the probable sales price of the Property in the market, as of September 20, 1991, would range from $750,000 to $800,000.

7. After obtaining an opinion from Towle regarding the fair market sales price of the Property, and as a result of First Trust's concerns regarding the value of the Property, First Trust proposed that the principal amount of the Loan be $500,000. First Trust had determined that it is customary, in commercial real estate mortgage transactions similar to the proposed transaction for a lender to charge the borrower a minimum origination fee of 1% of the amount of the loan. Accordingly, First Trust represents that on behalf of the Plan it will charge the Employer an origination fee of $5,000 (1% of $500,000).

It is represented that the interest rate charged to the Employer is comparable to that charged in the community to borrowers of the same credit worthiness as the Employer with similar collateral. Based on First Trust's knowledge of comparable transactions, the terms of the Loan, as agreed upon, are represented to be at least as favorable as those negotiated with an unrelated third party similar to the Employer.

Based on the estimated fair market value of the Property, First Trust has determined that the Loan would be adequately secured, even if the guaranty of 50% of the outstanding amount of the Loan were absent. However, First Trust represents that it is the policy of its commercial banking division to obtain personal guaranties in transactions of this nature. Accordingly, First Trust represents that the value of the Property and the guaranty of 50% of the outstanding amount of the Loan provide adequate security to the Plan.

First Trust represents that the composition of the Plan's portfolio after the investment in the Loan will continue to satisfy the diversification requirements of the Act. Approximately 26% of the Plan's assets are invested in the First Trust Short-Term Collective Fund, 55% is in U.S. Treasury Notes, and 20% is invested in an insurance company equity pooled account. If the proposed Loan is approved, First Trust anticipates that a portion of the First Trust Short-Term Collective Fund will be liquidated in order to fund the Loan. Thereafter, approximately 15% of the Plan's assets will be invested in the Loan and approximately 11% will remain in the First Trust Short-Term Collective Fund.

With respect to the liquidity of the Plan, the five (5) year term of the Loan, in the opinion of First Trust, is reasonable in light of the expected cash flow needs of the Plans. In making this determination, First Trust calculated that the Plan expended a total of $220,880 in participant distributions and administrative costs during the three year period from 1988–1990. In the opinion of First Trust, participant distributions and administrative costs are not expected to increase over the five (5) year term of the Loan at a rate faster than they have over the last three years. First Trust believes that adequate cash to meet the Plan's needs will be available from the following assets of the Plan: (a) The First Trust Short-Term Collective Fund which will contain approximately $350,000 after the Loan is funded; (b) U.S. Treasury Notes in the amount of $300,000, the earliest of which matures on May 15, 1992; (c) the

insurance company equity pooled account with a market value of approximately, $655,810, as of May 14, 1991; and (d) the Employer's monthly payments of approximately $10,000 to $11,000, pursuant to the Loan agreement. Accordingly, First Trust does not anticipate any cash flow problems as a result of the Loan transaction.

First Trust represents that the projected rate of return to the Plan from the Loan will be higher in relation to the return currently available to the Plan or those reasonable available at the same or a lesser level of risk. For these reasons, First Trust represents that the transactions are in the best interests of the Plan and its participants and beneficiaries.

First Trust will also administer the Loan in order to insure that the Plan receives timely installment payments and will levy a late charge when appropriate. In addition, it is represented that upon default in any installment payment, First Trust is authorized to enforce the Plan's rights by suing for specific performance or by selling the Property and applying the proceeds to repay the Loan.

8. In summary the Employer represents that the proposed transactions meet the statutory criteria of section 408(a) of the Act and section 4975(c)(2) of the Code because:

(a) The amount of the Loan represents less than 25% of the assets of the Plan;

(b) The Loan will be secured, in part, by Property with a value determined by an independent appraiser;

(c) The Plan's interest in the Property will be recorded as a first mortgage;

(d) Certain officers of the Employer have guarantied 50% of outstanding amount of the Loan;

(e) First Trust has determined that the value of the Property and the guaranty serve as adequate security for the Loan;

(f) First Trust, as independent fiduciary, has reviewed the terms of the Loan and has concluded that the proposed transactions are in the interest of and protective of the Plan and the participants and beneficiaries;

(g) First Trust will monitor compliance with the terms of the Loan throughout the duration of the transactions; and

(h) The Plan will incur no fees, commissions, or other charges as a result of the proposed transactions.

FOR FURTHER INFORMATION CONTACT: Angelena C. Le Blanc of the Department, telephone (202) 523-8883. (This is not a toll-free number.)

General Information

The attention of the interested persons is directed to the following:

(1) The fact that a transaction is the subject of an exemption under section 408(a) of the Act and/or section 4975(c)(2) of the Code does not relieve a fiduciary or other party in interest of disqualified person from certain other provisions of the Act and/or the Code, including any prohibited transaction provisions to which the exemption does not apply and the general fiduciary responsibility provisions of section 404 of the Act, which among other things require a fiduciary to discharge his duties respecting the plan solely in the interest of the participants and beneficiaries of the plan and in a prudent fashion in accordance with section 404(a)(1)(b) of the act; nor does it affect the requirement of section 401(a) of the Code that the plan must operate for the exclusive benefit of the employees of the employer maintaining the plan and their beneficiaries;

(2) Before an exemption may be granted under section 408(a) of the Act and/or section 4975(c)(2) of the Code, the Department must find that the exemption is administratively feasible, in the interests of the plan and of its participants and beneficiaries and protective of the rights of participants and beneficiaries of the plan; and

(3) The proposed exemptions, if granted, will be supplemental to, and not in derogation of, any other provisions of the Act and/or the Code, including statutory or administrative exemptions and transitional rules. Furthermore, the fact that a transaction is subject to an administrative or statutory exemption is not dispositive of whether the transaction is in fact a prohibited transaction.

(4) The proposed exemptions, if granted, will be subject to the express condition that the material facts and representations contained in each application are true and complete, and that each application accurately describes all material terms of the transaction which is the subject of the exemption.

Signed at Washington, DC, this 9th day of December, 1991.

Ivan Strasfeld,

Director of Exemption Determinations, Pension and Welfare Benefits Administration, U.S. Department of Labor.

[FR Doc. 91-29751 Filed 12-11-91; 8:45 am]

BILLING CODE 4510-29-M

NATIONAL SCIENCE FOUNDATION

Collection of Information Submitted for OMB Review

In accordance with the Paperwork Reduction Act and OMB Guidelines, the National Science Foundation is posting two notices of information collections that will affect the public. Interested persons are invited to submit comments by January 9, 1992. Comments may be submitted to:

Agency Clearance Officer. Herman G. Fleming, Division of Personnel and Management, National Science Foundation, Washington, DC 20550, or by telephone (202) 357-7335; and to:

OMB Desk Officer. Office of Information and Regulatory Affairs, Attn: Dan Chenok, Desk Officer, OMB, 722 Jackson Place, room 3208, NEOB, Washington, DC 20503.

Title: IEA Computers in Education—Stage 2.

Affected Public: Individuals.

Responses/Burden Hours: 20,000 respondents—40 minutes each response.

Abstract: The Computers in Education Study will collect information concerning how computers are used in instruction and how well students understand the basic principles of information technology. The study will help educators understand difference in performance, by exploring relations between factors such as curricula, time spent on school work, teacher training, classroom techniques and other variables.

Dated: December 6, 1991.

Herman G. Fleming,

NSF Reports Clearance Officer.

[FR Doc. 91-29626 Filed 12-11-91; 8:45 am]

BILLING CODE 7555-01-M

NUCLEAR REGULATORY COMMISSION

Advisory Committee on Reactor Safeguards, Subcommittee on Thermal Hydraulic Phenomena; Meeting

The Subcommittee on Thermal Hydraulic Phenomena will hold a meeting on December 17, 1991, in room P-422, 7920 Norfolk Avenue, Bethesda, MD.

Most of the meeting will be open to public attendance. A portion of the meeting will be closed to discuss information deemed proprietary to the Westinghouse Electric Corporation, pursuant to 5 U.S.C. 552b(c)(4).

The agenda for the subject meeting shall be as follows:

Tuesday, December 17, 1991—8:30 a.m. until the conclusion of business.

The Subcommittee will discuss pertinent issues relating to the requirements for integral system testing of the Westinghouse Electric

Corporation's AP-600 advanced reactor design.

Oral statements may be represented by members of the public with the concurrence of the Subcommittee Chairman; written statements will be accepted and made available to the Committee. Recordings will be permitted only during those portions of the meeting when a transcript is being kept, and questions may be asked only by members of the Subcommittee, its consultants, and staff. Persons desiring to make oral statements should notify the ACRS staff member named below as far in advance as is practicable so that appropriate arrangements can be made.

During the initial portion of the meeting, the Subcommittee, along with any of their consultants who may be present, may exchange preliminary views regarding matters to be considered during the balance of the meeting.

The Subcommittees will then hear presentations by and hold discussions with representatives of the NRC staff, the Westinghouse Electric Corporation, their consultants, and other interested persons regarding this review.

Further information regarding topics to be discussed, the scheduling of sessions open to the public, whether the meeting has been cancelled or rescheduled, the Chairman's ruling on requests for the opportunity to present oral statements and the time allotted therefor can be obtained by a prepaid telephone call to the Designated Federal Official, Mr. Paul Boehnert (telephone 301/492-8558) between 7:30 a.m. and 4:15 p.m. (EST). Persons planning to attend this meeting are urged to contact the above named individual one or two days before the scheduled meeting to be advised of any changes in schedule, etc., that may have occurred.

Dated: December 5, 1991.

Gary R. Quittschreiber,

Chief, Nuclear Reactors Branch.

[FR Doc. 91-29627 Filed 12-11-91; 8:45 am]

BILLING CODE 7590-01-M

Final Reports Governing Power Reactor License Renewals, Availability

AGENCY: Nuclear Regulatory Commission.

ACTION: Notice of availability.

SUMMARY: The Nuclear Regulatory Commission has published five reports that provide supplementary information to its final rule that establishes the procedures, criteria, and standards governing nuclear power plant license renewal. These reports provide the basis for the rule. They are:

(1) NUREG-1362, "Regulatory Analysis for Final Rule on Nuclear Power Plant License Renewal," USNRC, December 1991.

(2) NUREG-1398, "Environmental Assessment for Final Rule on Nuclear Power Plant License Renewal," USNRC, December 1991.

(3) NUREG-1412, "Foundation for the Adequacy of the Licensing Bases," USNRC, December 1991.

(4) NUREG-1428, "Analysis of Public Comments on the Proposed Rule on Nuclear Power Plant License Renewal," UNSRC, December 1991.

(5) NUREG-5382, "Screening of Generic Safety Issues for License Renewal Considerations," the MITRE Corporation, December 1991.

ADDRESSES: Copies of the NUREGs may be purchased from the Superintendent of Documents, U.S. Government Printing Office, P.O. Box 37082, Washington, DC 20013-7082. Copies are also available for purchase from the National Technical Information Service, 5285 Port Royal Road, Springfield, VA 22161.

FOR FURTHER INFORMATION CONTACT: George Sege, Office of Nuclear Regulatory Research, U.S. Nuclear Regulatory Commission, Washington, DC 20555, Telephone: (301) 492-3904.

Dated at Washington, DC, this 26th day of November, 1991.

For the Nuclear Regulatory Commission.

Warren Minners,

Director, Division of Safety Issue Resolution, Office of Nuclear Regulatory Research.

[FR Doc. 91-29629 Filed 12-11-91; 8:45 am]

BILLING CODE 7590-01-M

[Docket No. 50-213]

Connecticut Yankee Atomic Power Co., (Haddam Neck Plant); Exemption

I.

The Connecticut Yankee Atomic Power Company (CYAPCO, the licensee) is the holder of Facility Operating License No. DPR-61 which authorizes operation of the Haddam Neck Plant. The license provides, among other things, that the Haddam Neck Plant is subject to all rules, regulations, and Orders of the Commission now or hereafter in effect.

The plant is a single-unit pressurized water reactor at the licensee's site located in Middlesex County, Connecticut.

II.

One of the conditions of all operating licenses for water-cooled power reactors, as specified in 10 CFR 50.54(o), is that primary reactor containments shall meet the containment leakage test requirements set forth in 10 CFR part 50, appendix J. More specifically the following section requires that:

10 CFR Part 50, Appendix J, Section III.A.6.(b)

If two consecutive periodic Type A tests fail to meet the applicable acceptance criteria in III.A.5.(b), notwithstanding the periodic retest schedule of III.D, a Type A test shall be performed at each plant shutdown for refueling or approximately every 18 months, whichever occurs first, until two consecutive Type A tests meet the acceptance criteria in III.A.5.(b), after which time the retest schedule specified in III.D may be resumed.

The Haddam Neck Plant has failed the acceptance criteria for the three Type A tests performed from 1984 to 1987 because of leakage through containment penetrations. The Type A test is a test of the entire containment building and is normally performed every 3 to 4 years, such that three tests are conducted every 10-year period. Containment penetrations are also testable by local leak rate tests (Type B and Type C tests) which are required every refueling outage and at least every 2 years.

By letter dated August 12, 1991, the licensee requested an exemption to the requirements of section III.A.6.(b) proposing an aggressive "Local Leak Rate Testing—Corrective Action Plan" in lieu of more frequent Type A tests. This plan is further described in the safety evaluation dated December 5, 1991. The licensee has stated that the failures of the Type A tests were the result of the Type B and C penalty additions to the test results. The NRC staff confirmed this statement by reviewing the test reports and notes that the licensee has proposed and implemented a corrective action program consistent with NRC Office of Inspection and Enforcement Information Notice No. 85-71, issued August 22, 1985. This Information Notice provides guidance to licensees that states in circumstances as described above:

"* * * the general purpose of maintaining a high degree of containment integrity might be better served through an improved maintenance and testing program for containment penetration boundaries and isolation valves. In this situation, the licensee may submit a Corrective Action Plan with an alternative leakage test program proposal as an exemption request for NRC staff review. If this submittal is approved by the NRC staff, the licensee may implement the corrective action and alternative leakage test program in lieu of the required increase in Type A test frequency incurred after the failure of two successive Type A tests."

In addition, the NRC staff notes that the results of the Type A tests,

neglecting the addition of the penalties for the penetration leakages determined from the Type B and C tests, do not indicate any deterioration of the containment building and are typical of results of similar containment tests in the industry. The NRC staff concludes that the Corrective Action Plan will detect and correct the types of excess leakage that have occurred in the past (i.e., penetration leakage) because the plan includes (a) an augmented local leak rate test program, (b) a trending program, and (c) improved test procedures and methods. Further, the NRC staff sees no benefit to be gained by requiring a Type A test at this time since the Haddam Neck Plant has demonstrated the effectiveness of its Corrective Action Plan by successfully passing the "as found" Type A test during the 1989 outage. The staff finds that under these circumstances, the licensee should be granted exemption from the 18-month restriction. The staff also finds that if the Type A test performed during the Cycle 17 refueling outage meets the acceptance criteria of appendix J (thereby demonstrating further success of the Corrective Action Plan), the schedule for Type A tests will revert to that required under section III.D of appendix J. Many aspects of the Corrective Action Plan will be continued in the Containment Testing Program which will maintain the containment integrity through ongoing testing and maintenance to detect and focus licensee resources on future bad performers.

IV.

Accordingly, the Commission has determined that, pursuant to 10 CFR 50.12(a), the requested exemption is authorized by law, will not present an undue risk to the public health and safety, and is consistent with the common defense and security. Further, the Commission finds that special circumstances are present in that application of the regulation in these particular circumstances would not serve the underlying purpose of the rule and is not necessary to achieve the underlying purpose of the rule, in that, as discussed in Section III, the proposed alternative better meets the purpose of correcting excess leakage. The exemption provides only a one-time temporary relief from the applicable regulation and the licensee has made good faith efforts to comply with the regulation by implementing an alternative program to achieve the underlying purpose of the rule.

Accordingly, the Commission hereby grants the following exemption from the requirements of section III.A.6.(b) of appendix J to 10 CFR part 50:

The 18-month limit on the interval between the April 1989 Type A test and the required Type A test during Cycle 16 is waived until Cycle 17 based on the licensee's aggressive Corrective Action Plan and the successful Type A test in 1989.

If the results of the Type A test for Cycle 17 meet the acceptance criteria of section III.A.5.(b), the next required test shall be in accordance with the requirements of section III.D. If the results of the Type A test do not meet the criteria of section III.A.5.(b), the next required tests shall remain in accordance with the requirements of section III.A.6.(b).

Pursuant to 10 CFR 51.32, the Commission has determined that the granting of this Exemption will have no significant impact on the quality of the human environment (56 FR 58590).

This Exemption is effective upon issuance.

Dated at Rockville, Maryland this 5th day of December 1991.

For the Nuclear Regulatory Commission.

Steven A. Varga,

Director, Division of Reactor Projects—I/II, Office of Nuclear Reactor Regulation.

[FR Doc. 91-29731 Filed 12-11-91; 8:45 am]

BILLING CODE 7590-01-M

[Docket No. 70-3070-ML]

Louisiana Energy Services, L.P., (Claiborne Enrichment Center); Appointment of Adjudicatory Employee

In accord with the requirements of 10 CFR 2.4, notice is hereby given that Charles W. Emeigh, International Safeguards Branch, Office of Nuclear Material Safety and Safeguards, has been appointed as a Commission adjudicatory employee within the meaning of § 2.4 to advise the Commission on issues in the above-captioned proceeding related to consideration of safeguards requirements.

Mr. Emeigh has not been engaged in the performance of any investigative or litigating function in connection with the Claiborne Enrichment Center or in any factually-related proceeding.

Until such time as a final decision is issued, interested persons outside the agency and agency employees performing investigation or litigating functions in the Claiborne Enrichment Center operating license proceeding are required to observe the restrictions of 10 CFR 2.780 and 2.781 in their communications with Mr. Emeigh.

It is so ordered.

Dated at Rockville, Maryland this 6th day of December 1991.

For the Commission.

Samuel J. Chilk,

Secretary of the Commission.

[FR Doc. 91-29728 Filed 12-11-91; 8:45 am]

BILLING CODE 7590-01-M

[Docket No. 70-3070-ML]

Louisiana Energy Services, L.P., (Claiborne Enrichment Center); Appointment of Adjudicatory Employee

In accord with the requirements of 10 CFR 2.4, notice is hereby given that George E. Powers, Radiation Protection and Health Branch, Office of Nuclear Regulatory Research, has been appointed as a Commission adjudicatory employee within the meaning of § 2.4 to advise the Commission on issues in the above-captioned proceeding related to consideration of citing criteria for toxicity of uranium hexafluoride.

Mr. Powers has not been engaged in the performance of any investigative or litigating function in connection with the Claiborne Enrichment Center or in any factually-related proceeding.

Until such time as a final decision is issued, interested persons outside the agency and agency employees performing investigation or litigating functions in the Claiborne Enrichment Center operating license proceeding are required to observe the restrictions of 10 CFR 2.780 and 2.781 in their communications with Mr. Powers.

It is so ordered.

Dated at Rockville, Maryland this 6th day of December, 1991.

For the Commission.

Samuel J. Chilk,

Secretary of the Commission.

[FR Doc. 91-29729 Filed 12-11-91; 8:45 am]

BILLING CODE 7590-01-M

RESOLUTION TRUST CORPORATION

Statement of Policy on the Treatment of Collateralized Put Obligations After Appointment of the Resolution Trust Corporation as Conservator or Receiver

AGENCY: Resolution Trust Corporation.

ACTION: Policy statement.

SUMMARY: The Board of Directors of the Resolution Trust Corporation ("RTC") has adopted a Policy Statement that clarifies the treatment of collateralized put obligations by the RTC as

conservator or receiver for the issuing savings association.

DATES: This Policy Statement was effective April 30, 1991.

ADDRESSES: Resolution Trust Corporation, 801 17th Street NW., Washington, DC 20034.

FOR FURTHER INFORMATION CONTACT: Hu A. Benton, Senior Counsel, Securities and Finance, Legal Division, RTC 202/736-0301.

SUPPLEMENTARY INFORMATION: In April, 1990, the Board of Directors of the RTC adopted a policy regarding the payment of interest on direct collateralized obligations of a savings association after appointment of the RTC as conservator or receiver of the association (the "Policy on Direct Obligations"). A Notice was published in the **Federal Register** on April 17, 1990 [55 FR 14368], informing the public of the availability of the Policy on Direct Obligations. The Policy on Direct Obligations provides, among other things, that:

—The RTC, as conservator or receiver, has the right under the Financial Institutions Reform, Recovery, and Enforcement Act of 1989 ("FIRREA") to call, redeem or prepay any direct collateralized borrowing by repudiation or disaffirmance.

—Because of the market sensitive nature of the collateral generally securing these borrowings, such a redemption or prepayment through repudiation or disaffirmance will occur within 60 days after appointment of the conservator or receiver.

—In the event of such a redemption or prepayment, the principal amount of the obligation, plus interest at the contract rate up to and including the date of redemption or payment, will be payable to the extent secured by the collateral.

—If redemption or prepayment does not occur on or before the 60th day after the appointment of the conservator or receiver, then the terms of the contract will be enforceable during the pendency of the conservatorship or receivership.

The Policy on Direct Obligations defines the term "direct collateralized obligations" to exclude contingent obligations such as letters of credit. On September 25, 1990, the Board of Directors of the RTC adopted a policy regarding the treatment of collateralized letters of credit of a savings association following the appointment of the RTC as conservator or receiver of the association (the "Policy on Collateralized Letters of Credit"). The Policy on Collateralized Letters of Credit provides that such letters of credit issued by savings associations prior to the effective date of FIRREA will be treated similarly to direct collateralized borrowings, except that the conservator or receiver will have 180 days following its appointment, rather than 60 days, to determine whether to repudiate or to continue to perform under the letter of credit arrangement.

Subsequent to the adoption of the Policy on Collateralized Letters of Credit, questions have arisen regarding another type of contingent obligation known as collateralized put options. According to one estimate, there are currently between 30 and 40 unit investment trusts that purchased securities from financial institutions, including savings associations, subject to an option to require the selling institution to repurchase some or all of the sold securities under specified circumstances, at a specified date or during a specified period. In many cases, these transactions permitted savings associations to sell tax-exempt obligations issued by State and local governmental units or other public agencies which, because of their tax-exempt status and changes in credit market conditions, bore yields that had become unattractive, particularly for institutions unable to benefit from tax-exempt income.

The Federal Home Loan Bank Board (the "FHLBB"), prior to the enactment of FIRREA, provided written assurances to the national credit rating agencies and others to the affect that the beneficiary of a collateralized put option would have a provable claim and would have an enforceable security interest in the collateral even if the only event of default was the insolvency of the savings association. Under the FHLBB policy, the Federal Savings and Loan Insurance Corporation, as receiver of a failed savings association, would either accelerate the association's obligations under the put or assume such obligations.

Due to market and credit rating agency uncertainty at the present time regarding the RTC's position with respect to collateralized put obligations, holders of securities sold subject to such options might have an incentive to exercise their options solely because the selling institution could at some point be placed in conservatorship or receivership. Exercise of the options under these circumstances could adversely affect the liquidity of the associatons, as well as returning to their portfolios tax-exempt bonds and other securities that may not fit their current investment needs. Thus, elimination of uncertainties surrounding treatment of collateralized put obligations by the RTC as conservator or receiver should reduce the possibility of such undesirable events and lower overall costs to the RTC of future resolutions.

The Statement of Policy set forth below establishes the treatment by the Resolution Trust Corporation (the "RTC") of collateralized "put" obligations issued by a savings association for which the RTC is subsequently appointed conservator or receiver.

Statement of Policy

The RTC considered a number of relevant policy factors, including its legal rights and powers under FIRREA; the assurances provided by the FHLBB prior to the enactment of FIRREA and market reliance on those assurances; the need for market certainty and stability; and the potential long-term cost to the RTC of outright repudiation of collateralized put options or of immediate acceleration of the issuer's obligations under such options. Based on its consideration and balancing of such factors, the RTC has determined to adopt and implement the following policy with respect to the treatment of collateralized put options after appointment of the RTC as conservator or receiver:

(1) The Policy on Direct Obligations shall apply in all respects to collateralized put options originally issued by savings associations prior to the effective date of FIRREA. Accordingly, the RTC, in its capacity as conservator or receiver, may accelerate the association's obligation under the put option, in which event payment will be tendered under the option, to the extent of available collateral, up to an amount equal to the repurchase or strike price provided in the option contract, plus any expenses of liquidation of the collateral, to the extent provided in the contract. If the holder of the option for any reason fails to accept the amount tendered, the RTC will deem the option contract and collateral arrangement terminated. If the RTC does not accelerate this option, then the terms of the contract will be enforceable during the pendency of the conservatorship or receivership.

(2) Notwithstanding paragraph 3 of the Policy on Direct Obligations, the RTC shall have 180 (rather than 60) days from the date of appointment of the conservator or receiver to make a determination whether or not to accelerate a collateralized put obligation. The additional time is required to enable the RTC to evaluate

properly the entire transaction of which the option is a part, which in many cases will be highly complex. In the case of institutions where the RTC already has been so appointed, the 180-day period shall begin to run as of the date of adoption of this policy.

(3) This policy is intended to cover only collateralized put obligations issued in connection with capital markets financing transactions, including formation of publicly offered unit investment trusts and other sales of savings associations' portfolio securities in capital markets transactions, undertaken in reliance on assurances provided to rating agencies and investors by the FHLBB.

(4) It is understood that persons involved in secured transactions with savings associations may reasonably rely upon this policy statement.

By Order of the Board of Directors.

Dated at Washington, DC, this 6th day of December, 1991.

Resolution Trust Corporation.

John M. Buckley, Jr.,

Executive Secretary.

[FR Doc. 91-29646 Filed 12-11-91; 8:45 am]

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SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-30037; International Series No. 351; File No. SR-AMEX-91-20; Amdt. No. 1]

Self-Regulatory Organizations; Filing of Amendment No. 1 to Proposed Rule Change by the American Stock Exchange, Inc., Relating to Warrants on a Basket of Ten Foreign Currencies

December 5, 1991.

Pursuant to section 19(b)(1) of the Securities Exchange Act of 1934 ("Act"), 15 U.S.C. 78s(b)(1), notice is hereby given that on November 25, 1991, the American Stock Exchange, Inc. ("AMEX" or "Exchange") filed with the Securities and Exchange Commission ("Commission") Amendment No. 1 to the proposed rule change as described in Items I, II and III below, which Items have been prepared by the self-regultory organization. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The AMEX is proposing to delete language that it previously proposes to be included in section 106(d) of the AMEX Company Guide (Currency and Index Warrants—Cash Settlement), in connection with its proposal to list and trade warrants on a basket of ten major foreign currencies.[1] Specifically, the Exchange proposes to delete language relating to the physical delivery of the underlying foreign currency or currencies. Accordingly, that portion of section 106(d) that provides for cash settlement of index and currency warrants in U.S. dollars would remain unchanged.

The text of the proposed rule change is available at the Office of the Secretary, AMEX, and at the Commission.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the self-regulatory organization included statements concerning the purpose of, and statutory basis for, the proposed rule change and discussed any comments it receives on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The self-regulatory organization has prepared summaries, set forth in sections (A), (B), and (C) below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

The Exchange has proposed to list under Section 106 (Currency and Index Warrants) of the Amex Company Guide warrants on a basket of ten major foreign currencies, which are identical to, and weighted in accordance with, the U.S. dollar index established and published by the Federal Reserve Board ("Fed").[2] The value of such basket can be expected to fluctuate along with changes in the rate of exchange between the U.S. dollar and the individual currencies included in such basket, as reflected in the U.S. Dollar Index ("USDX") of the FINEX Division of the New York Cotton Exchange ("NYCE").[3]

This Amendment No. 1 proposes to delete the original proposed modification to section 106(d) which would have permitted settlement by means of physical delivery of the underlying currencies, at the election of the holder. Accordingly, the Exchange will require that warrants based on a basket of currencies settle in cash in U.S. dollars, like other currency warrants presently listed on the AMEX.[4]

The Exchange believes that the proposed rule change is consistent with section 6(b) of the Act, in general, and furthers the objectives of section 6(b)(5), in particular, in that it is designed to prevent fraudulent and manipulative acts and practices and to promote just and equitable principles of trade, and is not designed to permit unfair discrimination between customers, issuers, brokers or dealers.

B. Self-Regulatory Organization's Statement on Burden on Competition

The Amex believes that the proposed rule change will impose no burden on competition.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

No written comments were either solicitied or received with respect to the proposed rule change.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Within 35 days of the date of publication of this notice in the Federal Register or within such longer period (i) as the Commission may designate up to 90 days of such date if it finds such longer period to be appropriate and publishes its reasons for so finding or (ii) as to which the self-regulatory organization consents, the Commission will:

(a) By order approve such proposed rule change, or

(b) Institute proceedings to determine whether the proposed rule change should be disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views and arguments concerning the foregoing. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, NW.,

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[1] See Securities Exchange Act Release No. 29753 (September 27, 1991), 56 FR 50741.

[2] The U.S. dollar index calculated by the Fed is based on the change in exchange rates relative to a specified March 1973 base period. The value of these changes is weighted based on each index component country's share of multilateral world trade (also as of March 1973) and the averaged.

[3] Futures contracts based on USDX, as well as options on USDX furthers, currently traded on the FINEX Division of the NYCE.

[4] See Securities Exchange Act Release Nos. 24555 (June 5, 1987), 52 FR 22570 and 26152 (October 5, 1988), 53 FR 39832.

Washington, DC 20549. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Section, 450 Fifth Street, NW., Washington, DC. Copies of such filing will also be available for inspection and copying at the principal office of the above-mentioned self-regulatory organization. All submissions should refer to the file number in the caption above and should be submitted by January 2, 1992.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 91-29658 Filed 12-11-91; 8:45 am]

BILLING CODE 8010-01-M

[Release No. 34-30033; International Series Release No. 350; File No. SR-NASD-91-63]

Self-Regulatory Organizations; National Association of Securities Dealers, Inc., Filing and Order Granting Accelerated Temporary Approval to Proposed Rule Change Relating to the Quotation Linkage Between the NASD and the London Stock Exchange

December 4, 1991.

Pursuant to section 19(b)(1) of the Securities Exchange Act of 1934 ("Act"), 15 U.S.C. 78s(b)(1), notice is hereby given that on November 25, 1991, the National Association of Securities Dealers, Inc. ("NASD" or "Association") filed with the Securities and Exchange Commission ("Commission" or "SEC") the proposed rule change as described in Items I, II, and III below, which Items have been prepared by the NASD. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

On October 2, 1987, the Commission issued an order approving operation of a market information linkage between the NASD and the London Stock Exchange ("LSE") (formerly the International Stock Exchange of the United Kingdom and the Republic of Ireland, Ltd.) for a pilot term of two years.[1] This experimental linkage is designed to provide an interchange of quotation information ("linkage information") on about 740 securities ("linkage securities"); of that total, each marketplace has designated approximately half as its "pilot group" of linkage securities. NASD and LSE members that function as market makers in one or more of a subset of linkage securities that are quoted in both the NASDAQ and LSE dealer systems ("common issues") are authorized to access linkage information without paying a separate charge to receive this information. Operation of the linkage in this fashion comports with the terms of the Commission's October 1987 Order. Most recently, the Commission authorized an extension of this pilot linkage through December 4, 1991, with the Commission's approval of File No. SR-NASD-91-52.[2]

Pursuant to section 19(b)(1) of the Act and Rule 19b-4 thereunder, the NASD submits this proposed rule change to obtain Commission approval for continued operation of the NASD/LSE pilot linkage through May 5, 1992.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission the NASD included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The NASD has prepared summaries, set forth in Sections (A), (B), and (C) below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

The purpose of this filing is to obtain an interim extension of the Commission's temporary approval of the NASD/LSE linkage through May 5, 1992. Absent an extension, authorization for the linkage will expire as of December 4, 1991.

During this proposed extension, the NASD and LSE will continue to discuss possible options regarding the Linkage's future structure and operational capabilities in relation to the needs of the international investment community. These discussions may lead to a substantive enhancement of the linkage, the pursuit of another joint initiative, or a decision to act independently in developing international systems that are responsive to the business needs of the sponsors' constituencies. Any decision to enhance the linkage or to jointly develop an alternative system will entail another Rule 19b-4 filing that will afford the Commission (and other interested parties) an opportunity to focus on relevant policy and regulatory issues. Meanwhile, continuation of the pilot linkage as proposed would be supportive of the NASD's and LSE's efforts to define systems capable of accommodating cross-border trading more efficiently.

Another factor likely to affect the future prospects of the NASD/LSE linkage is the introduction of the NASDAQ International Service ("SERVICE"), which the Commission approved on October 11, 1991.[3] Essentially the SERVICE would extend the NASD's automated market-making systems to a European Session running from 3:30 to 9 a.m. (EST) on each U.S. business day. During this period, participating broker-dealers can utilize the SERVICE to quote markets in selected NASDAQ and exchange-listed securities by means of trading facilities located in the U.S. or U.K. Given the SERVICE's potential for supporting trading in U.S. registered securities by institutional investors (both foreign and domestic) during U.K. business hours, the NASD and LSE may determine to substantially alter or terminate the pilot linkage altogether. The NASD is planning to launch the SERVICE in January 1992. Nonetheless, until the NASD has had an opportunity to evaluate the SERVICE's start-up phase, the NASD believes it appropriate to maintain the NASD/LSE linkage.

The statutory bases for the NASD/LSE pilot linkage and the requested extension thereof, are contained in sections 11A(a)(1) (B) and (C) 15A(b)(6), and 17A(a)(1) of the Act. Subsections (B) and (C) of section 11A(a)(1) set forth the Congressional goals of achieving more efficient and effective market operation, the availability of information with respect to quotations for securities and the execution of investor orders in the best market through the application of new data processing and communications techniques. Section 15A(b)(6) requires that the rules of the

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[1] Securities Exchange Act Release No. 24979 (October 2, 1987), 52 FR 37684 (October 8, 1987), (the "October 1987 Order").

[2] Securities Exchange Act Release No. 29786 (October 4, 1991), 56 FR 51730 (October 15, 1991).

[3] Securities Exchange Act Release No. 29812 (October 11, 1991), 56 FR 52082 (October 17, 1991).

NASD be designed "to foster cooperation and coordination with persons engaged in regulating, clearing, settling, processing information with respect to, and facilitating transactions in securities, to remove impediments to and to perfect the mechanism of a free and open market * * * " Section 17A(a)(1) sets forth the Congressional goal of linking all clearance and settlement facilities and reducing costs involved in the clearance and settlement process through new data processing and communications techniques. The NASD believes that the requested extension of the linkage's pilot operation is fully consistent with the policy goals articulated in the foregoing statutory provisions and with the Commission's efforts to advance the process of internationalization of the securities markets.

B. Self-Regulatory Organization's Statement on Burden on Competition

In its original release announcing interim approval of the NASD/LSE pilot linkage, the Commission referenced certain competitive concerns raised by the Instinet Corporation ("Instinet") through counsel.[4] In response, the NASD, after consultation with the LSE, made a good faith effort to address those concerns by narrowing the universe of firms and terminals permitted access to linkage information at no cost. Those changes were reflected in File No. SR–NASD–87–20, which the Commission approved by issuing the October 1987 Order. Further, in File No. SR–NASD–89–44 (which resulted in an extension of the linkage's authorization until December 1, 1990), the NASD submitted statistical and cost information relative to its participation in the pilot project. In the event that the NASD and LSE determine to seek permanent approval of or materially enhance the linkage, the NASD represents that every effort will be made to supply the Commission with the empirical data needed for its deliberations on the corresponding Rule 19b–4 filing.

With respect to the instant filing, the NASD believes that the proposed extension of the linkage pilot will not create any competitive burden *vis-a-vis* Instinet or any other vendor of securities market information. Moreover, Instinet and other interested parties will have ample opportunity to comment on any subsequent Rule 19b–4 filing involving permanent approval or substantive enhancements of the linkage. Finally, during the requested extension, the sponsoring markets will not use linkage information for purposes of operating an intermarket, automated execution system.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

Comments were neither solicited nor received.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

The NASD requests that the Commission find good cause for approving this proposed rule change prior to the 30th day following publication of notice of the filing in the **Federal Register**, in any event by December 4, 1991, the expiration of the linkage's present authorization. The NASD believes that the requested extension of the pilot period is fully consistent with the statutory provisions and policy goals referenced in section 3 of this Rule 19b–4 filing. Moreover, the additional time will enable the sponsoring markets to consider various options and determine the future course of this experimental project. Those deliberations will focus on evaluating feasible enhancements to the linkage as well as alternative projects intended to advance the internationalization of the securities markets through more efficient computerized systems. Additionally, experience gained from the start-up phase of the SERVICE may also affect discussions on the future of the NASD/LSE linkage. Under these circumstances, it would be counterproductive to allow the NASD/LSE linkage to cease operation. Accordingly, the NASD believes that good cause exists to approve this proposed rule change on a date no later than December 4, 1991.

The Commission finds that the proposed rule change is consistent with the requirements of the Act and the rules and regulations thereunder applicable to the NASD and, in particular, the requirements of sections 11A(a)(1) (B) and (C), 15A(b)(6), 17A(a)(1) and the rules and regulations thereunder.

The Commission finds good cause for approving the proposed rule change prior to the 30th day after the date of publishing of notice of filing thereof. The Commission believes that accelerated approval will avoid an unnecessary interruption of the pilot linkage while allowing the NASD and LSE to consider feasible options for enhancing the linkage or defining other automation initiatives to facilitate the efficient handling of international order flow. Accordingly, the Commission believes the NASD/LSE linkage should not be terminated while these efforts are ongoing.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Room.

Copies of the filing will also be available for inspection and copying at the principal office of the NASD. All submissions should refer to the file number in the caption above and should be submitted by January 2, 1992.

It is therefore ordered, pursuant to section 19(b)(2) of the Act, that the above-mentioned proposed rule change be, and hereby is approved thereby extending the NASD/LSE linkage until May 5, 1992.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority, 17 CFR 200.30–3(a)(12).

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 91–29659 Filed 12–11–91; 8:45 am]

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[4] See Securities Exchange Act Release No. 23158 (April 21, 1986), 51 FR 15989 (April 29, 1986). See also letter from Daniel T. Brooks, Counsel for Instinet, to John Wheeler, Secretary, Securities and Exchange Commission, dated April 16, 1986.

[Release No. 34–30038; File No. SR–OCC–91–19]

Self-Regulatory Organizations; the Options Clearing Corporation; Filing of Proposed Rule Change Revising Sequences in the Pledge Program

December 5, 1991.

Pursuant to section 19(b)(1) of the Securities Exchange Act of 1934, ("Act") 15 U.S.C. 78s(b)(1), notice is hereby given that on November 22, 1991, The Options Clearing Corporation ("OCC") filed with the Securities and Exchange Commission ("Commission") the proposed rule change described in Items

I, II, and III below, which items have been prepared by the self-regulatory organization. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The proposed rule change would modify OCC's rules relating to the processing sequence of exercises or sales of pledged positions amongst multiple pledgees.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, OCC included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. OCC has prepared summaries, set forth in sections (A), (B), and (C) below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

The purpose of the proposed rule change is to clarify the processing sequence for exercises or sales of options or index participations ("IPs") [1] which have been pledged pursuant to OCC Rule 614. OCC designated and implemented the pledge program to enable market-makers, specialists, and Clearing Members to use their long positions in options and, in more limited instances, IPs to secure a greater number of collateralized loans on more favorable financing terms.[2]

In 1984, OCC's pledge program was enhanced to permit Clearing Members to utilize multiple pledgees.[3] That enhancement included a processing sequence for exercises or sales of pledged positions of the same options series (or IPs class) among multiple pledgees.[4] Currently, those processing procedures provide that exercises or sales of pledged positions, after initially being applied to positions in the primary account, will be allocated among pledge accounts in descending order. Thus, exercises or sales are allocated first to the pledge account with the highest numerical designation and last to the pledge with the first numerical designation.

Pledgees, however, have advised OCC that the language of Rule 614, from time to time, has resulted in confusion as to their priority status with respect to pledged positions and have requested OCC to clarify the Rule's processing sequence. Accordingly, OCC has determined to accede to their request. Thus, the language describing the processing sequence is clarified to provide that exercises or sales of pledged positions, after being applied to the primary account, will be first allocated to the pledge account designated as first, second to the pledge account designated as second, etc. This description of the processing sequence is clearer and is more consistent with the pledgees' expectations of their priority status as described in the second paragraph of OCC Rule 614(a).

OCC also is proposing, where appropriate, to call an "option" or "IP" a "cleared security" (or, in the plural, "cleared securities") to conform OCC Rule 614 to certain revisions, which are contained in File No. SR–OCC–90–11, as amended,[5] made to the Pledge Agreement executed by OCC, the pledgor, and the pledgee.

The proposed rule change is consistent with section 17A of the Act because it promotes the prompt and accurate clearance and settlement of securities transactions while further enhancing a pledge program which enables participants in the options market to obtain collateralized loans to support their options trading activities.

B. Self-Regulatory Organization's Statement on Burden on Competition

OCC does not believe that the proposed rule will have an impact or impose a burden on competition.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

Comments on the proposed rule changes were not and are not intended to be solicited, and none have been received.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Within thirty-five days of the date of publication of this notice in the Federal Register or within such longer period (i) as the Commission may designate up to ninety days of such date if it finds such longer period to be appropriate and publishes its reasons for so finding or (ii) as to which the self-regulatory organization consents, the Commission will:

(a) By order approve such proposed rule change or

(b) Institute proceedings to determine whether the proposed rule change should be disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views and arguments concerning the foregoing. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Section, 450 Fifth Street, NW., Washington, DC 20549. Copies of such filing will also be available for inspection and copying at the principle office of OCC. All submissions should refer to File No. SR–OCC–91–19 and should be submitted by January 2, 1992.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[6]

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 91–29663 Filed 12–11–91; 8:45 am]

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[1] Pending approval by the Commission of File No. SR–OCC–91–05 (OCC's proposed rule change that would allow OCC to issue, guarantee, clear, and settle IPs, notice of which was published in Securities Exchange Act Release No. 29081 (April 12, 1991), 56 FR 16142). IPs may not be pledged to OCC under the pledge program.

[2] For a comprehensive description of the framework of the pledge program, refer to Securities Exchange Act Release No. 19956 (July 19, 1983), 48 FR 33956 (order approving OCC's pledge program.

[3] Securities Exchange Act Release No. 20994 (May 25, 1984), 49 FR 23132 (notice of filing and immediate effectiveness of expansion of OCC's pledge program).

[4] OCC Rule 614(f).

[5] Securities Exchange Release No. 28676 (December 4, 1990), 55 FR 51365 (notice of filing of proposed rule change relating to OCC account structure).

[6] 17 CFR 200.30–3(a)(12).

[Release No. 34-30041; File Nos. SR-OCC-90-04 and SR-ICC-90-03]

Self-Regulatory Organizations; the Options Clearing Corporation and the Intermarket Clearing Corporation; Order Approving on a Temporary Basis Proposed Rule Changes To Expand the OCC/ICC Cross-Margin Program to Market Professional Accounts

December 5, 1991.

On March 15, 1990, The Options Clearing Corporation ("OCC") and The Intermarket Clearing Corporation ("ICC") submitted proposed rule changes (File Nos. SR–OCC–90–04 and SR–ICC–90–03) to the Securities and Exchange Commission ("Commission" or "SEC") pursuant to section 19(b) of the Securities Exchange Act of 1934 ("Act").[1] Notice of the proposals appeared in the **Federal Register** on July 25, 1990, to solicit comment from interested persons.[2] On November 25, 1991, OCC and ICC filed amendments to their proposals. No comments were received by the Commission. As discussed below, the Commission is approving the OCC and ICC proposals on a temporary basis through November 30, 1993.

I. Description

A. Background

The existing OCC/ICC cross-margin program ("Proprietary Cross-Margin Program") [3] is limited to eligible contracts[4] in proprietary accounts maintained by participating joint clearing members.[5] The proposed rule changes will permit the expansion of the OCC/ICC cross-margin program to positions in market professional accounts[6] carried by participating clearing members ("Non-Proprietary Cross-Margin Program").

The proposed OCC/ICC Non-Proprietary Cross-Margin Program is substantially the same as the non-proprietary cross-margin program recently established between OCC and the Chicago Mercantile Exchange ("CME").[7] Inasmuch as the Commission order approving the OCC/CME program describes the legal, regulatory, and operational issues related to the OCC and ICC proposals, this order will identify the differences between the OCC/CME non-proprietary cross-margin program and the proposed OCC/ICC Non-Proprietary Cross-Margin Program.

B. The Proposal

Specifically, the proposed rule changes will extend the existing OCC/ICC Proprietary Cross-Margin Program to include non-proprietary positions carried by OCC/ICC joint clearing members in Market Professional Accounts. OCC and ICC, as part of the proposals, have modified their existing Intermarket Margining Agreement. While the new agreement, "Amended and Restated Intermarket Cross-Margining Agreement" ("Amended Agreement"), includes the same general provisions as the existing OCC/ICC cross-margining agreement, it has been modified as necessary to accommodate the Non-Proprietary Cross-Margin Program. To implement the Amended Agreement, OCC and ICC have amended, respectively, OCC's By-Laws (article VI, section 23) and ICC's Rules (chapters I and V). The OCC and ICC proposals also have adopted various technical and conforming changes to their respective rules.[8] The proposals do not change the list of options and futures products eligible for cross-margining at ICC.

The OCC/ICC Non-Proprietary Cross-Margin Program, however, in some respects is constructed differently than the recently-approved OCC/CMF program. These differences are due mainly to the fact that ICC, a registered clearing agency, will have control of both the options and futures contracts. The major differences between the two non-proprietary cross-margin programs are as follows: First, the OCC/ICC Non-Proprietary Cross-Margin Program has no special joint OCC/ICC cross-margining accounts, as those jointly established by OCC and CME under the OCC/CME program, to separate between OCC and ICC the money, securities, and other property deposited into the Non-Proprietary Cross-Margin Program. In this regard, the OCC/ICC Non-Proprietary Cross-Margin Program will not require participating Joint Clearing Members to maintain either: (1) Separate clearing accounts at OCC or ICC specifically designated as cross-margin accounts for cross-margin positions or related assets or (2) OCC/ICC joint cross-margin bank accounts. The clearing accounts and the bank accounts will be in the name of ICC alone.[9] Nevertheless, ICC will not

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[1] 15 U.S.C. 78s(b) (1988).

[2] Securities Exchange Act Release No. 8205 (July 18, 1990), 55 FR 30349.

[3] For a detailed description of the Proprietary Cross-Margin Program, see Securities Exchange Act Release No. 26153 (October 3, 1988), 53 FR 39567 [File No. SR–OCC–88–17] (Order approving OCC/ICC Proprietary Cross-Margin Program). "Cross-margining" is based on the existence of intermarket hedged positions, *i.e.*, a position in a financial instrument in one market (*e.g.*, the options market) and an offsetting position in a financial instrument in another market (*e.g.*, the futures market). Under these circumstances, an increase in the value of one side of the hedged position in one market will offset, to some extent, a corresponding decrease in the value of the other side of the hedged position in the other market. For example, a market participant with a short option contract in the Standard and Poor's 500 Index that is traded on an options exchange and is cleared at OCC may hedge this position with a long NYSE Composite Index futures contract that is traded on a futures exchange and is cleared at ICC. Under the example, in the existing system both OCC and ICC would require the OCC/ICC member market participant to post clearing margin with them in order to protect the clearing organizations from default and market risks associated with these contracts independently. Thus, to the extent that the combined effect of the participant's positions at OCC and ICC reduces the combined risk to the clearing organizations, the amount of clearing margin that the participant must post at OCC and ICC likewise can be reduced.

Use of the terms "hedge" or "offset" in this Order should not be read as defining or interpreting hedge or offset as those terms are defined in the Act, the Commodity Exchange Act ("CEA"), Bankruptcy Code, or any of the rules and regulations thereunder.

[4] "Eligible contracts" are set forth in Securities Exchange Act Release No. 26153 (October 3, 1988), 53 FR 39567, at note 14 and accompanying text [File No. SR–OCC–88–17] ("Order approving OCC/ICC Proprietary Cross-Margin Program").

[5] Under the existing Proprietary Cross-Margin Program, participating joint clearing members must be members of both OCC and ICC (*i.e.*, participating clearing members as opposed to affiliated members). OCC and ICC have filed proposals with the Commission that would extend participation in cross-margining to affiliated pairs of clearing members. Securities Exchange Act Release No. 27749 (February 28, 1990), 55 FR 8276 [File Nos. SR–OCC–90–02 and File No. SR–ICC–90–01].

[6] "Market professional account" is a defined term that includes: (1) A combined market-makers' or specialists' account, a separate market-maker's or specialist's account, a registered trader's account, or a separate stock specialist's or separate stock market-maker's account; or (2) a separate customer floor trader's or off-floor traders' account or a combined floor trader's account. Section 1(h) of Second Amended and Restated Intermarket Cross-Margining Agreement. The term "market professional account," is set forth in conforming language in proposed article VI, section 23(d) of OCC's By-Laws and in proposed Rule 513(d) of ICC's Rules.

[7] Securities Exchange Act Release No. 29991 (November 26, 1991), 56 FR 61458 [File No. SR–OCC–90–01 (Order approving OCC/CME non-proprietary cross-margin program) (Hereinafter the "OCC/CME Non-Proprietary Cross-Margin Order").

[8] Under the proposal, section 1 of the Amended Agreement will add several definitions applicable to the Non-Proprietary Cross-Margin Program. Modifications of sections 3 and 4 of the Amended Agreement will extend the cross-margining mechanism currently used for cross-margined firm accounts to the Market Professional Accounts. Modifications to section 5 of the Amended Agreement will provide that, whereas funds resulting from the liquidation of cross-margined positions in the firm account will be deposited in the Proprietary Liquidating Settlement Account, proceeds from the liquidation of cross-margined positions in the Market Professional Accounts will be deposited in the particular Customers' Liquidating Settlement Account established in respect to the particular Market Professional Account at ICC. Under ICC's rules, a separate Liquidating Settlement Account is established for each account maintained by the clearing member with ICC on behalf of customers.

[9] Telephone conversations between James C. Yong, Assistant Secretary, OCC, and Jerry W.

Continued

permit Clearing Members to commingle in a single Market Professional Account positions or property held for market professionals who have elected to participate in the OCC/ICC Non-Proprietary Cross-Margin Program with assets held for market professionals who have not elected to participate in that program or with assets held for any other customers.

Second, unlike the OCC/CME cross-margin program, where the responsibilities are shared between two clearing agencies, in the OCC/ICC program, all operational and financial responsibilities will be vested in ICC. Specifically, all positions subject to the OCC/ICC Non-Proprietary Cross-Margin Program will be maintained at ICC. ICC will bear responsibility calculating and collecting margin requirements and deposits from clearing members for Market Professional Accounts. The settlement of cross-margin accounts will occur on a daily basis exclusively at ICC and not on an OCC/ICC joint basis. All priority interests on the cross-margin accounts will be maintained by ICC, and ICC will maintain the relevant clearing fund. Under the proposals, ICC will assume all the risks of the Non-Proprietary Cross-Margining Program.[10]

As in the OCC/CME Non-Proprietary Cross-Margin Order, the OCC/ICC proposals extending cross-margining to Market Professional Accounts will modify the Proprietary Cross-Margin Program to accommodate certain CEA segregation requirements and to avoid conflicting distribution schemes in the event of a Clearing Member liquidation.[11] In this connection, the Commodity Futures Trading Commission ("CFTC") has issued an order ("CFTC Order") [12] that will allow, under certain conditions, Clearing Members to commingle money, securities, and property received by a Clearing Member to margin, guarantee, or secure non-proprietary cross-margin options and futures contracts.[13]

The OCC/ICC proposals also modify the Proprietary Cross-Margin Program to address the potential for conflict between the Securities Investor Protection Act of 1970 ("SIPA")[14] and the corresponding CFTC bankruptcy regulations[15] in the event of the liquidation and distribution of the property and funds of an OCC or ICC Clearing Member who is a registered broker-dealer.[16] To establish uniform results in the event of the liquidation of a broker-dealer Clearing Member under SIPA, the OCC/ICC proposals will require each Market Professional electing to participate in the Non-Proprietary Cross-Margin Program to agree that in the event of the bankruptcy or liquidation of the Clearing Member that carries its cross-margined positions, the Market Professional will subordinate its cross-margin related claims to the claims of the Clearing Member's non-cross-margining customers.[17] Similarly,

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Carpenter, Branch Chief, Division of Market Regulation ("Division"), SEC, and Thomas C. Etter, Jr., Attorney, Division, SEC (November 15, 1991) between James C. Yong, Assistant Secretary, OCC, and Thomas C. Etter, Jr., Attorney, Division, SEC (November 20, 1991).

[10] *Id.*

[11] See Discussion in text of OCC/CME non-proprietary cross-margin Order, at notes 15–19.

[12] CFTC Order (November 26, 1991), 56 FR 61406.

[13] CFTC Regulations §§ 1.20(a), 1.22, and 1.24 (17 CFR 1.20(a), 1.22, and 1.24 [1991]) profit the commingling of customer futures funds with customer non-futures funds. The CFTC Order modifies those restrictions on the following conditions:

(a) Each participating clearing organization, participating clearing firm, and participating market professional execute the agreements referred to herein;

(b) Each participating clearing organization, participating clearing firm, and depository separately account for cross-margining property maintained in nonproprietary cross-margining accounts and not commingle such cross-margining property with money, securities, and property maintained in any non-cross-margining accounts or proprietary cross-margining accounts;

(c) Each participating clearing organization, participating clearing firm, participating market professional, and depository provide the CFTC with access to its books and records with respect to nonproprietary cross-margining accounts and positions in a manner consistent with CFTC Regulation 1.31 [17 CFR 1.31 (1991)];

(d) Each participating clearing firm include all cross-margining property received from participating market professionals as provided herein to margin, guarantee, or secure commodity futures trades, commodity futures contracts, commodity option transactions, or securities option transactions, or accruing to such participating market professionals as a result of such trades, contracts, commodity option transactions, or securities option transactions, when calculating segregation requirements for purposes of section 4d of the CEA;

(e) Each participating clearing firm compute total segregation requirements under section 4d of the CEA and CFTC Regulation 1.32 [17 CFR 1.32 (1991)], by calculating separately the requirements for cross-margining and non-cross-margining accounts without using any net liquidating equity in one account to reduce a deficit in the other;

(f) Each participating clearing firm designate non-proprietary cross-margining accounts and positions as such in its books and records, including both internal documents maintained at the firms and account statements sent to participating market professionals;

(g) Each participating clearing organization calculate the margin requirements for each nonproprietary cross-margining account separately from the margin requirements for other accounts, including proprietary cross-margining accounts; collect any margin required with respect to non-proprietary cross-margining accounts separately without applying any margin in any such account to satisfy a margin requirement in any proprietary account or any non-cross-margining customer account and without applying any margin in a non-cross-margining customer account to satisfy a margin requirement in any proprietary account or any non-proprietary cross-margining account; and maintain all cross-margining property received from participating clearing firms to margin, guarantee, or secure commodity futures trades, commodity futures contracts, commodity option transactions, or securities options transactions that are effected for non-proprietary cross-margining accounts or held in such accounts, and all accruals resulting from such trades, contracts, commodity option transactions, or securities option transactions, separately from money, securities, and property received to margin, guarantee, or secure commodity futures trades, commodity futures contracts, commodity option transactions, or securities option transactions, or securities option transactions that are effected for or held in any proprietary account or any non-cross-margining customer account and related accruals; and

(h) Each participating clearing organization satisfy any deficiency in a non-proprietary cross-margining account without recourse to non-cross-margining segregated funds.

The CFTC Order, however, allows Clearing Members to commingle cross-margin property maintained in respect of the Non-Proprietary Cross-Margin Program with money, securities, and property maintained in respect of other non-proprietary cross-margin programs between OCC and other commodity clearing organizations or between ICC and other commodity clearing organizations approved by the CFTC, and may apply such commingled money, securities, and property to meet its obligations to a commodity or options clearing organization arising from trades or positions held in its Non-Proprietary Cross-Margin Account established pursuant to one or more such cross-margin programs. Such commingling is permitted only if the participating Clearing Member: (1) Separately identifies and accounts for the money, securities, and property held pursuant to each of the non-proprietary cross-margin programs separately from property held in other non-proprietary cross-margin accounts; and (2) separately calculates the margin requirements for each non-proprietary cross-margin program, treating each position as being held pursuant to only one such arrangement.

[14] 15 U.S.C. 78aaa–78111 (1988).

[15] 17 CFR 190.01–190.10 (1991).

[16] Most Market Professionals, as registered broker-dealers or "specialists" in their own right, would not be "customers" within the meaning of SIPA or Rule 15c3–3 under the Act (17 CFR 240.15c3–3 (1991)). Some commodity clearing corporation members trading in OCC issued options for their own account could be deemed "customers" under either SIPA or Rule 15c3–3 if those positions are carried on the books of broker-dealers. Both types of market professionals, however, will be required to agree, as stated above, to subordinate their claims in a clearing member broker-dealer insolvency to the claims of other customers.

[17] Under SIPA, the securities Investor Protection Corporation ("SIPC") satisfies the claims of "customers" against insolvent broker-dealers up to predetermined limits. 15 U.S.C. 78fff–3 (1988). Under SIPA, however, the term "customer" does not include any person to the extent that such person has a claim for cash or securities which, by agreement, is subordinated to the claims of any or all creditors of the debtor. 15 U.S.C. 78111(2)(B) (1988). Because a Market Professional will be required to subordinate its cross-margin related claims against a Clearing Member to those of the Clearing Member's non-cross-margining customers, it will not fall within the protection afforded by SIPA. Letter from Michael E. Don, Deputy General Counsel, SIPC, to Ross Pazzol, Attorney Adviser, Division of Market Regulation ("Division"), Commission (July 16, 1990).

each participating Market Professional must acknowledge that all of the assets carried in a Market Professional Account on the Market Professional's behalf will not be deemed "customer property" for the purposes of SIPA or give rise to any claim thereunder. This means in the event of a Clearing Member bankruptcy all claims to assets in Market Professional Accounts are to be determined under subchapter IV of the Bankruptcy Code (Commodity Broker Liquidation)[18] and applicable CFTC regulations.[19] In addition, each of these measures reduces the possibility that the assets in a Market Professional Account will be subject to two potentially conflicting schemes of distribution.[20]

In the event of a Clearing Member default, OCC/ICC will follow the same remedies as outlined in the OCC/CME Non-Proprietary Cross-Margin Order to liquidate the Market Professional Accounts. Any deficit in the Market Professional Account would be offset against any credit in the proprietary cross-margin account. Non-cross-margin related positions at OCC held for a Clearing Member would be liquidated or transferred pursuant to OCC procedures as they exist today.[21] ICC will liquidate that position in each account and reduce the account balance to a deficit or credit, applying margin deposits related to that account. OCC and ICC will not offset a credit in the Market Professional Account with a deficit in any proprietary account including the proprietary cross-margin account or with any other account OCC or ICC maintains for the defaulting Clearing Member. Similarly, OCC and ICC will not offset a deficit in the Market Professional Account against property or positions in any proprietary account including the proprietary cross-margin account or with any other account OCC or ICC maintains for the defaulting Clearing Member.[22] Because the Clearing Member must not commingle the positions of electing and non-electing Market Professionals, ICC will be able to pay any surplus in each Market Participant Account to the Clearing Member or its representative.

In the event of a Clearing Member bankruptcy, OCC and ICC will be exempt from the automatic stay only to the extent necessary to liquidate any assets held for the insolvent Clearing Member.[23] The process for and limitations on the liquidation and offset in accounts held by an insolvent Clearing Member is the same as the process and limitations described for a defaulting Clearing Member. The assets of the Clearing Member held in a Market Professional Account therefore will be set-off only against related liabilities in the account. Any assets remaining after such a set-off will be transerred to the bankruptcy trustee for administration and distribution.

If a Joint Clearing Member becomes insolvent, SIPC may and probably will have the power to file for a protective decree under SIPA.[24] SIPC will then appoint a trustee charged with liquidating the bankrupt estate, consistent with SIPA and SIPC by-laws.[25] Under SIPA, the trustee must administer the assets of the Joint Clearing Member held as a commodity broker in accordance with the Bankruptcy Code's commodity broker liquidation requirements [26] and applicable CFTC regulations.[27] Even if SIPC does not exercise its power to seek appointment of a trustee and SIPA does not apply to the liquidation, it is the intended result that Market Professional claims to assets in the Non-Proprietary Cross-Margin Account be determined in accordance with the Bankruptcy Code's commodity broker liquidation requirements [28] and applicable CFTC regulations.[29]

II. Discussion

The Commission believes that the proposals are consistent with the Act and particularly with section 17A of the Act.[30] Sections 17A(b)(3) (A) and (F) [31] require that a clearing agency be organized and that its rules be designed to assure the safeguarding of securities and funds in the custody or control of the clearing agency or for which the clearing agency is responsible. Section 17A(b)(3)(F) also requires that clearing agency rules be designed to facilitate the prompt and accurate clearance and settlement of securities transactions and to protect investors and the public interest.

The primary purpose of these proposed rules changes is to expand the existing OCC/ICC cross-margining program in order to provide for the cross-margining of non-proprietary positions in Market Professional Accounts that are carried by OCC/ICC Joint Clearing Members. The proposals reflect the widespread belief that expanded cross-margin systems, including the OCC/ICC Non-Proprietary Cross-Margin Program, can provide: (1) A more accurate measure of intermarket risk exposure for clearinghouses; (2) added liquidity and depth to markets by reducing cash flow levels for clearing members and by reducing potential for financial gridlock, particularly during volatile markets when clearing corporations may demand additional clearing margin from their members; (3) more efficient use of broker-dealer capital due to a more accurate measure of market risk; (4) reduced clearing costs by the integration of clearing functions and the centralization of asset management; and (5) safer broker-dealer liquidation mechanisms by simplifying and clarifying the unwinding of each side of an intermarket hedge.

Accordingly, for the reasons set forth above and for the reasons set forth in the order approving the OCC/CME non-

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[18] 11 U.S.C. 761–766 (1988).

[19] 17 CFR 190.01–190.10 (1991).

[20] Currently, 48 of OCC's 143 Clearing Members are also registered as FCMs.

[21] Pursuant to OCC Rule 1104(a), "[u]pon the suspension of a Clearing Member, [OCC] shall promptly convert to cash, in the most orderly manner practicable, all margins deposited with [OCC] by such Clearing Member in all accounts * * * and all of such Clearing Member's contributions to the Clearing Fund * * *." For a detailed explanation of OCC suspension and liquidation procedures, see OCC Rules 1101–1110.

[22] Upon the suspension or expulsion of a Clearing Member, ICC will create a separate "liquidating settlement account" for each account maintained by the Clearing Member with ICC on behalf of customers. All funds, margin proceeds, and the proceeds from the liquidation of positions in a customer's account shall be deposited in the particular customer's liquidating settlement account created in respect of that account and shall be used by ICC solely to discharge the obligations of the Clearing Member to ICC in respect of the transactions and positions in that account. ICC Rule 614(b)(i).

[23] 11 U.S.C. 362(b)(6) (1988).

[24] 11 U.S.C. 742 (1988); 15 U.S.C. 78aaa–78lll (1988).

[25] 11 U.S.C. 742 (1988).

[26] Subchapter IV (Commodity Broker Liquidation), chapter 7 of the Bankruptcy Code, 11 U.S.C. 761–766 (1988).

[27] The Commission, CFTC, and SIPC, have reviewed and concur in OCC's and CME's analyses of what will happen in the event of a Clearing Member default or insolvency and the legal basis for these conclusions. 15 U.S.C. 78fff–1(b) (1988) states in part:

> To the extent consistent with the provisions of this Act or as otherwise ordered by the court, a trustee shall be subject to the same duties as a trustee in a case under chapter 7 of title 11 of the United State Code, including, if the debtor is a commodity broker, as defined under section 101 of such title, the duties specified in subchapter IV of such chapter 7 * * *.

At this time, the Commission is not aware of any such inconsistencies between the provisions of SIPA and the Bankruptcy Code. Moreover, the Commission understands that the Market Transactions Advisory Committee (See Securities Exchange Act Release No. 29801 (October 9, 1991), 56 FR 52080) will be asked to explore if any inconsistencies exist and and, if so, how they should be addressed.

[28] Subchapter IV, Chapter Seven, of the Bankruptcy Code, 11 U.S.C. 761–766 (1988).

[29] See also Order approving OCC/CME Non-Proprietary Cross-Margin Program.

[30] 15 U.S.C. 78q–1 (1988).

[31] 15 U.S.C. 78q–1(b)(3) (A) and (F) (1988).

proprietary cross-margin program,[32] the Commission believes that this proposal is consistent with the Act and that it warrants approval.

III. Conclusion

For the reasons discussed in this order, the Commission finds that the proposed rule changes are consistent with the requirements of the Act, particularly section 17A of the Act,[33] and the rules and regulations thereunder.

It is therefore ordered, pursuant to section 19(b)(2) of the Act,[34] that the above-mentioned proposed rule changes (File Nos. SR–OCC–90–04 and SR–ICC–90–03) be, and hereby are, approved on a temporary basis through November 30, 1993.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[35]

Self-Regulatory Organizations; Midwest Stock Exchange, Inc.; Application for Unlisted Trading Privileges in an Over-the-Counter Issue and To Withdraw Unlisted Trading Privileges in an Over-the-Counter Issue

December 4, 1991.

On November 8, 1991, the Midwest Stock Exchange, Inc. submitted an application for unlisted trading privileges ("UTP") pursuant to section 12(f)(1)(C) of the Securities Exchange Act of 1934 ("Act") in the following over-the-counter ("OTC") security, *i.e.*, a security not registered under section 12(b) of the Act.

File No.	Symbol	Issuer
7–7527	SYGN	Synergen, Inc. Common Stock $.01 par value.

The above-referenced issue is being applied for as an expansion of the exchange's program in which OTC securities are being traded pursuant to the granting of UTP.

The MSE also applied to withdraw UTP pursuant to section 12(f)(4) of the Act on the following issue:

File No.	Symbol	Issuer
7–7528	STPL	St. Paul Companies, Inc. Common Stock $1.50 par value.

The Exchange requests that St. Paul Companies, Inc. be removed from the program due to its listing on the New York Stock Exchange.

Comments

Interested persons are invited to submit, on or before December 25, 1991, written comments, data, views and arguments concerning this application. Persons desiring to make written comments should file three copies with the Secretary, Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549.

Commentators are asked to address whether they believe the requested grant of UTP would be consistent with section 12(f)(2), which requires that, in considering an application for extension of UTP in an OTC security, the Commission consider, among other matters, the public trading activity in such security, the character of such trading, the impact of such extension on the existing markets for such security, and the desirability of removing impediments to and the progress that has been made toward the development of a national market system.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 91–29660 Filed 12–4–91; 8:45 am]

BILLING CODE 8010–01–M

[Rel. No. IC–18431; 812–7817]

First UNUM Life Insurance Co., et al.

December 5, 1991.

AGENCY: Securities and Exchange Commission (the "Commission").

ACTION: Notice of application for exemption under the Investment Company Act of 1940 (the "1940 Act").

APPLICANTS: First UNUM Life Insurance Company ("First UNUM"), VA–1 Separate Account of First UNUM Life Insurance Company (the "Separate Account"), and UNUM Sales Corporation.

RELEVANT 1940 ACT SECTIONS: Exemption requested under Section 6(c) from Sections 26(a)(2)(C) and 27(c)(2).

SUMMARY OF APPLICATION: Applicants seek an order permitting the deduction of mortality and expense risk charges from the assets of the Separate Account under certain group deferred variable annuity contracts (the "Contracts").

FILING DATE: The application was filed on November 1, 1991.

HEARING OR NOTIFICATION OF HEARING: If no hearing is ordered, the application will be granted. Any interested person may request a hearing on this application, or ask to be notified if a hearing is ordered. Any requests must be received by the Commission by 5:30 p.m., on December 30, 1991. Request a hearing in writing, giving the nature of your interest, the reason for the request, and the issues you contest. Serve the Applicants with the request, either personally or by mail, and also sent it to the Secretary of the Commission, along with proof of service by affidavit, or, for lawyers, by certificate. Request notification of the date of a hearing by writing to the Secretary of the Commission.

ADDRESSES: Secretary, Securities and Exchange Commission, 450 Fifth Street NW., Washington, DC 20549. Applicants, c/o Joan Sarles Lee, Esq., First UNUM Life Insurance Company, 2211 Congress Street, Portland, Maine 04122.

FOR FURTHER INFORMATION CONTACT: Joyce M. Pickholz, Attorney, at (202) 272–3046 or Heidi Stam, Assistant Chief, at (202) 272–2060, Office of Insurance Products (Division of Investment Management).

SUPPLEMENTARY INFORMATION: Following is a summary of the application. The complete application is available for a fee from the Commission's Public Reference Branch.

Applicants' Representations

1. First UNUM is a stock life insurance company chartered under New York law in 1959. First UNUM is an indirect subsidiary of UNUM Corporation, a publicly owned company.

2. The Separate Account is registered with the Commission as a unit investment trust under the 1940 Act. The Separate Account currently consists of five subaccounts which will invest in shares of the Dreyfus Life and Annuity Index Fund, Inc., the Variable Insurance Products Fund: Growth Portfolio, the Variable Insurance Products Fund II: Asset Manager Portfolio, and TCI Portfolios, Inc.: TCI Growth and TCI Balanced.

3. UNUM Sales, an indirect subsidiary of UNUM Corporation, will be the principal underwriter and distributor of the Contracts.

4. The Contract provides for a death benefit for a participant who dies during the annuity period and before age 70½. The death benefit is the greater of (a) the sum of all contributions made under the Contract, less net withdrawal amounts, outstanding loans (including

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[32] See supra note 7 and accompanying text.

[33] 15 U.S.C. 78q–1 (1988)

[34] 15 U.S.C. 78s(b)(2) (1988).

[35] 17 CFR 200.30–3(a)(12) (1991).

principal and due and accrued interest) and amounts converted to an annuity, or (b) the participant's account balance less any outstanding loan (including principal and due and accrued interest).

5. During the Accumulation Period, First UNUM charges a Contingent Deferred Sales Charge ("CDSC") on all total or partial withdrawals of a participant's account balance unless the withdrawal is on account of one of the following events: (a) The participant has attained age 59½; (b) the participant has incurred a disability for which he or she is receiving Social Security payments; (c) the participant has died; or (d) the participant has terminated employment with the employer. Amounts subject to the CDSC are charged 5% during the first six years participation years. The CDSC then decreases 1% per year through year 10. There is no CDSC in participation year 11 and thereafter. The CDSC on any withdrawal may be reduced or eliminated to the extent that First UNUM anticipates that it will incur lower sales expenses due to (a) group size, (b) an existing relationship, (c) use of mass enrollment procedures, or (d) the performance of sales functions by the contractholder or employer. The CDSC is imposed on the gross withdrawal amount, which is the amount requested by the participant plus the CDSC and any other applicable charges. Death benefits and amounts converted to an annuity are not subject to the CDSC. In no event will the CDSC exceed 8.5% of the cumulative contributions to a participant's account.

6. The First UNUM deducts from the net assets of the Separate Account a daily charge in an amount equal to 1.2% on an annual basis. This charge is assessed both during the accumulation period and the annuity period. The charge consists of .25% for the expense risk and .95% for the mortality risk. Applicants state that the relative proportion of these charges, consistent with industry practice, is estimated and, therefore may change based on First UNUM's experience in administering the Contracts. However, the total cumulative charge may not be altered.

7. The expense risk arises from the risk that the actual expenses incurred by First UNUM in issuing and administering the Contract will be more than First UNUM estimated. The mortality risk arises from the chance that First UNUM's actuarial estimate of mortality rates during the annuity period, as guaranteed in the Contract, may prove erroneous and that an annuitant may live longer than expected. By making this contractual guarantee, First UNUM assures that neither an annuitant's own longevity nor an improvement in life expectancy generally will have any adverse effect under the Contracts. In addition, First UNUM bears the mortality risk that it guarantees to pay a death benefit that may be higher than the participant's account balance upon the participant's death prior to the annuity period.

8. As consideration for administrative services relating to the Contracts, First UNUM deducts $25 per year from each participant's account balance. This annual administrative charge is imposed only during the accumulation period. First UNUM does not anticipate a profit from the annual administrative charge and such charge is guaranteed not to increase.

9. Applicants represent that the mortality and expense risk charge under the Contracts has been designed to reasonably compensate First UNUM for its assumption of mortality and expense risks. If the asset charge proves to be insufficient to cover the actual cost of the mortality and expense risk undertakings, First UNUM will bear the loss. Conversely, if the deduction is more than sufficient, First UNUM will realize a profit that will be available for any proper corporate purpose. Although First UNUM may ultimately realize a profit from the charge to the extent it is not needed to meet the actual expenses incurred, the aggregate charge is guaranteed and will never be increased. First UNUM asserts that it cannot ascertain with certainty the extent to which the mortality and expense risk charge under the Contracts will cover the mortality and expense risks assumed.

10. First UNUM submits that it is entitled to reasonable compensation for its assumption of mortality and expense risks, and Applicants represent that the level of the mortality and expense risk charge imposed is both within the range of industry practice for comparable annuity contracts and reasonable in relation to the risks assumed. Applicants state that this representation is based upon their analysis of publicly available information regarding comparable contracts of other companies, taking into consideration such factors as death benefit guarantees, annuity purchase rate guarantees, other contractual charges, the frequency of charges, the administrative services performed by the companies with respect to the Contracts, the distribution methods, the market for the Contracts and the tax status of the Contracts. Applicants represent that they will maintain at their home office, and make available to the Commission, a memorandum setting forth in detail the comparable variable annuity products analyzed, and the methodology and results of Applicants' comparative review.[1]

11. Applicants acknowledge that if the revenues generated by the CDSC are insufficient to cover First UNUM's actual costs related to the distribution of the Contracts, such costs will be paid from First UNUM's general account assets, which may include any profit derived from the mortality and expense risk charge. Notwithstanding the foregoing, First UNUM has concluded that there is a reasonable likelihood that the proposed distribution financing arrangement made with respect to the Contracts will benefit contractholders and participants as well as the Separate Account. The basis for First UNUM's conclusion is set forth in a memorandum which will be maintained by First UNUM at its home office and will be available to the Commission.

12. First UNUM represents that the Separate Account will invest only in an underlying mutual fund which undertakes, in the event it should adopt any plan under Rule 12b-1 under the 1940 Act to finance distribution expenses, to have such plan formulated and approved by a board of directors, a majority of the members of which are not "interested persons" of such fund within the meaning of section 2(a)(19) of the 1940 Act.

For the Commission, by the Division of Investment Management, pursuant to delegated authority.

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 91-29661 Filed 12-11-91; 8:45 am]

BILLING CODE 8010-01-M

[Rel. No. IC-18430; 812-7815]

United Financial Group, Inc.; Application

December 5, 1991.

AGENCY: Securities and Exchange Commission ("SEC").

ACTION: Notice of application for exemption under the Investment Company Act of 1940 (the "Act").

APPLICANT: United Financial Group, Inc. (the "Company").

RELEVANT 1940 ACT SECTIONS: Exemption requested under sections 6(c) and 6(e) of the Act.

[1] The application will be amended during the notice period to state that this memorandum will be maintained for as long as the Separate Account is a registered investment company.

SUMMARY OF APPLICATION: Applicant seeks an order exempting it from all provisions of the Act, subject to certain exceptions, until December 30, 1982. The requested relief would continue an exemption originally granted until December 30, 1990 (the "1990 Order") and extended by an amended order until December 30, 1991 (the "1991 Order").

FILING DATE: The application was filed on October 28, 1991 and amended on December 4, 1991.

HEARING OR NOTIFICATION OF HEARING: An order granting the application will be issued unless the SEC orders a hearing. Interested persons may request a hearing by writing to the SEC's Secretary and serving applicant with a copy of the request, personally or by mail. Hearing requests should be received by the SEC by 5:30 p.m. on December 30, 1991, and should be accompanied by proof of service on the Applicant, in the form of an affidavit or, for lawyers, a certificate of service. Hearing requests should state the nature of the writer's interest, the reason for the request, and the issues contested. Persons who wish to be notified of a hearing may request notification by writing to the SEC's Secretary.

ADDRESSES: Secretary, SEC, 450 5th Street NW., Washington, DC 20549. Applicant, 5847 San Felipe, suite 2600, Houston, Texas 77057.

FOR FURTHER INFORMATION CONTACT: Marc Duffy, Staff Attorney, (202) 272–2511, or Max Berueffy, Branch Chief, (202) 272–3016 (Division of Investment Management, Office of Investment Company Regulation).

SUPPLEMENTARY INFORMATION: The following is a summary of the application. The complete application may be obtained for a fee at the SEC's Public Reference Branch.

Applicant's Representations

1. The Company was a savings and loan holding company whose primary asset and source of income was the United Savings Association of Texas ("USAT"). As a result of the severe recession in Texas beginning in 1986, USAT's financial condition deteriorated, and on December 30, 1988 it was placed into receivership. The assets of USAT were sold to an unaffiliated third party and the Company received no consideration for the loss of its primary subsidiary, thereby generating a substantial capital loss. In light of this capital loss, the Company determined not to liquidate, but instead to acquire an operating business.

2. The Company's efforts to acquire an operating business have been substantially hindered due to claims asserted against it by the Federal Savings and Loan Insurance Corporation ("FSLIC"). FSLIC asserted an approximately $534 million claim against the Company in January 1989 for failure to maintain the net worth of USAT (the "Net Worth Claim") and an approximately $14 million claim concerning certain tax refunds alleged to have been received by the Company (together with the Net Worth Claim, the "FDIC Claims"). Although the Company disputes these claims, their existence constitutes a large contingent liability against the Company's assets, thus making it difficult for the Company to acquire an operating business.

3. During 1989 and 1990, the Company was in continuous negotiations with the Federal Deposit Insurance Company ("FDIC"), the successor to FSLIC, in an attempt to reach a resolution of the FDIC Claims and in early 1990 the Company reached a tentative agreement with the FDIC. However, in December 1990 the FDIC rejected the Company's settlement offer and informed the Company that no counter proposal would be offered. In mid-1991 the Company again contacted the FDIC to determine whether a settlement could be reached on the FDIC Claims. Beginning in July 1991, the Company and the FDIC's representatives again began negotiations and in August 1991, the Company offered a proposed settlement. Although, the FDIC has not responded to the Company's settlement proposal, in December 1991 the FDIC requested, and the Company provided, an agreement to toll the statute of limitations for the period expiring July 31, 1992 so that the FDIC would have adequate time to review any possible claims against the Company that might reflect on a global settlement.

4. Rule 3a–2 under the Act provides a one-year safe harbor to issuers that meet the definition of an investment company but intend to maintain that status only transiently. The Company relied on the safe harbor provided by this rule from January 1, 1988 until December 30, 1989. The expiration of the safe harbor period necessitated the filing of an application for exemption. In 1990 the Company was granted conditional relief from all provisions of the Act until December 30, 1990. Investment Company Act Release Nos. 17395 (March 21, 1990) (notice) and 17441 (April 18, 1990) (order) (the "1990 Order"). In 1991 this order was amended to extend this exemption until December 30, 1991. Investment Company Act Release Nos. 17941 (January 9, 1991) (notice) and 17989 (February 7, 1991) (order) (the "1991 Order").

5. As described in detail in the applications for the 1990 and 1991 Orders, during a portion of the period in which the requested exemption will be effective, it is possible that the Company will be subject to the jurisdiction of the federal bankruptcy courts. In this regard, the Company has formulated a plan of reorganization (the "Reorganization Plan") to be implemented under Chapter 11 of the Bankruptcy Code once the FDIC approves a settlement of the FDIC Claims. The Reorganization Plan would settle the outstanding claims against the Company and provide a structure for the possible acquisition of a new operating business or businesses. Because the bankruptcy court is charged with protecting the interests of the Company's creditors and equity interest holders, the Company believes that it is not necessary for it to comply with section 17(a) or section 17(d) with respect to transaction approved by the bankruptcy court.

Applicant's Legal Analysis

1. Section 3(a)(3) of the Act defines the term "investment company" to include any issuer that "is engaged or proposes to engage in the business of investing, reinvesting, owning, holding, or trading in securities, and owns or proposes to acquire investment securities having a value exceeding 40% of the value of such issuer's total assets (exclusive of Government securities and cash items) on an unconsolidated basis." The Company acknowledges that, based on its current mix of assets, it may be deemed to be an investment company under section 3(a)(3) of the Act.

2. By this application, the Company requests, pursuant to sections 6(c) and 6(e) of the Act, that the SEC issue an order amending the 1991 Order, thereby exempting the Company from all provisions of the Act, subject to certain exceptions, until December 30, 1992.

3. In determining whether to grant exemptive relief for a transient investment company, the Commission considers such factors as: (1) Whether the failure of the company to become primarily engaged in a non-investment business or excepted business or liquidate within one year was due to factors beyond its control; (2) whether the company's officers and employees during that period tried, in good faith, to effect the company's investment of its assets in a non-investment business or excepted business or to cause the liquidation of the company; and (3) whether the company invested in securities solely to preserve the value of

its assets. The Company asserts that it meets these criteria.

4. The Company asserts that its failure to become primarily engaged in a non-investment business by December 30, 1991 is a result of factors beyond its control. The existence of the FDIC Claims has precluded the Company from investing its assets in a non-investment company business. Although the Company's executive officers reviewed numerous possible asset or business acquisitions, the magnitude of the FDIC Claims and the potential threat that the FDIC would seek to enjoin any utilization of the Company's assets has prevented the Company from investing its assets in a non-investment company business.

5. Pending the settlement of the FDIC Claims, the Company has limited its investments to high quality marketable securities, cash or cash equivalents. Thus, the Company asserts that it primarily invests in securities solely to preserve the value of its assets.

6. Although the Company has made substantial efforts to formulate alternative methods by which it can acquire an operating business and utilize its capital loss, the pending settlement negotiations of the FDIC Claims make it necessary for the Company to seek an extension of the 1991 Order. This would allow the Company to seek an FDIC settlement and, if successful, to formulate and implement new plans for becoming an operating business and utilizing the Capital Loss.

7. The Company believes that the issuance of an amended order exempting it from all provisions of the Act, subject to certain exemptions, until December 30, 1992 would be in the public interest and consistent with the protection of investors and the purposes of the Act. The Company believes that it would be unfair to its stockholders to require it to register as an investment company and that such registration is not necessary for the protection of its stockholders.

Applicant's Conditions

Applicant agrees that the requested exemption will be subject to the following conditions, each of which will apply to the applicant until it acquires an operating business or otherwise falls outside the definition of an investment company:

1. During the period of time the Company is exempted from registration under the Act, it will not purchase or otherwise acquire any securities other than securities with a remaining maturity of 397 days or less and that are rated in one of the two highest rating categories by a nationally recognized statistical rating organization, as that term is defined in rule 2a-7(a)(10 of the Act.

2. The Company will continue to comply with sections 9, 17(e) and 36 of the Act.

3. The Company will continue to comply with sections 17(a) and 17(d) subject to the following exceptions. It is therefore understood:

(a) If the Company becomes subject to the jurisdiction of the bankruptcy court, the Company need not comply with section 17(a) or section 17(d) with respect to any transaction, including without limitation the Reorganization Plan, that is approved by the bankruptcy court; and

(b) The Company would not be required to comply with section 17(a) or section 17(d) with respect to any transactions that result in its ceasing to fall within the definition of an "investment company" provided that (i) no cash payments are made to an "affiliated person" (as defined in the Act) of the Company as part of such transaction or services of transactions and (ii) no debt securities are issued to an affiliated person of the Company as part of such transactions unless such debt securities are expressly subordinated upon liquidation to claims of the holders of the Company's 9% Debentures.

4. The Company will continue to comply with section 17(f) of the Act as provided in rule 17f-2.

For the SEC, by the Division of Investment Management, under delegated authority.

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 91-29657 Filed 12-11-91; 8:45 am]

BILLING CODE 8010-01-M

DEPARTMENT OF STATE

Office of the Secretary

[Public Notice 1531]

Delegation of Authority No. 191, Deputy Secretary

Delegation of Authority

By virtue of the authority vested in me as Secretary of State, including the authority of section 4 of the Act of May 26, 1949 (22 U.S.C. 2658) and Presidential Determination No. 92-4, I hereby delegate to the Deputy Secretary the reporting function requested by section 136(b) of the Foreign Relations Authorization Act, Fiscal Years 1986 and 1987 (Pub. L. 99-93).

Notwithstanding this delegation of authority, the Secretary of State may exercise the function herein delegated.

Dated: December 2, 1991.

James A. Baker, III,

Secretary of State.

[FR Doc. 91-29651 Filed 12-11-91; 8:45 am]

BILLING CODE 4710-10-M

Bureau of Politico-Military Affairs

[Public Notice 1532]

Determination Under the Arms Export Control Act

Pursuant to section 654(c) of the Foreign Assistance Act of 1961, as amended, notice is hereby given that the Under Secretary of State for International Security Affairs has made a determination pursuant to section 73 of the Arms Export Control Act and has concluded that publication of the determination would be harmful to the national security of the United States.

Dated: December 4, 1991.

Richard A. Clarke,

Assistant Secretary of State for Politico-Military Affairs.

[FR Doc. 91-29650 Filed 12-11-91; 8:45 am]

BILLING CODE 4710-25-M

TENNESSEE VALLEY AUTHORITY

Philadelphia-Langford Transmission Line

AGENCY: Tennessee Valley Authority.

ACTION: Notice of no practicable alternative to impacting wetlands.

SUMMARY: The Tennessee Valley Authority (TVA) is proposing to construct a 161-kV electric power transmission line from TVA's Philadelphia, Mississippi, Substation in Neshoba County to Central Electric Power Association's (CEPA) Langford Substation in Rankin County, Mississippi. New facilities will be added to both substations. The transmission line route will be "steered" to a site in Sebastopol to allow CEPA to convert the existing 46-kV substation for 161-kV operation. The Philadelphia-Sebastopol section of the proposed transmission line will have an in-service date of November 1, 1992; the Sebastopol-Langford section will have a November 1, 1993, in-service date.

An environmental assessment, in accordance with the National Environmental Policy Act, is being prepared. This proposal will result in the disturbance of about 59 acres of

wetlands; however, it has been determined that no practicable alternative exists. TVA is requesting public comment on the impact to wetlands.

DATES: TVA will consider all relevant comments received by December 26, 1991, before a final decision is made on the proposal.

ADDRESSES: Any comments on this proposal should be addressed to M. Paul Schmierbach, Manager, Environmental Quality Staff, Tennessee Valley Authority, 400 W. Summit Hill Drive, Knoxville, Tennessee 37902.

FOR FURTHER INFORMATION CONTACT: For additional information on this action, call M. Paul Schmierbach, Manager, Environmental Quality Staff, Tennessee Valley Authority at (615) 632–6578.

SUPPLEMENTARY INFORMATION: TVA evaluated two electrical alternatives in addition to the proposed action and no action. One of the alternatives was to place combustion turbines in the Langford area to provide additional system generation as well as emergency backup to the Langford and Leake areas. This was rejected because of undesirable transmission system operating characteristics.

Another alternative was to provide a second 161–kV source to Langford via an 8-mile interconnection to Mississippi Power and Light (MP&L). It also provided a 161–kV source to CEPA's planned Sebastopol 161–kV substation directly from TVA's Philadelphia, Mississippi, 161–kV substation—approximately 19 miles of new transmission line. Discussions between TVA and MP&L were unsuccessful in reaching mutually satisfactory conditions for such an interconnection. The combined estimated costs of the interconnection and the Philadelphia-Sebastopol 161–kV transmission line were greater than the proposed action.

The overall length of the proposed route is 61 miles. The line will be built on a 100-foot-wide right-of-way using H-frame construction. To build this line, about 731.8 acres of new right-of-way will have to be acquired.

The proposed transmission line crosses a portion of Bienville National Forest and traverses two forested ecoregions. The northeastern portion of the corridor lies within the oak-pine forest, while the southwestern portion is within the southeastern evergreen forest region. Within these regions, the route crosses a variety of forested and open land habitats including deciduous and evergreen forests, croplands, old fields, areas of residential and commercial development, and wetlands. Additionally, many areas have been clearcut.

The greatest impact resulting from clearing and construction of the proposed transmission line will be the modification of 59 acres of palustrine forested wetlands. Right-of-way clearing within or near wetlands could reduce use by migrant wintering waterfowl. This impact is exacerbated by past clearing of other forested wetlands within the study area for various land uses.

The extent of impacts have been reduced by sensitive route location and can be further minimized by the use of specific practices for clearing, construction, and maintenance on these forested wetlands. These will include:

(1) Identified wetlands, streams, and drainways will not be modified so as to alter natural hydrological patterns.

(2) Naturally occurring hydric soils should not be disturbed or modified in any way that would alter their hydrological properties.

(3) Right-of-way clearing within forested wetlands should be accomplished by hand and should be restricted to the minimal width necessary to allow for construction and operation of the proposed line.

(4) If heavy equipment is required to accomplish right-of-way clearing within forested wetlands, lay-down pads will be used to remove vegetation and string transmission line cable.

(5) With the permission of landowners, cleared vegetation will be windrowed along the downslope side of the right-of-way to assist in erosion/sediment control.

(6) Within wetland areas or streams, stumps will not be uprooted or removed.

(7) Future right-of-way maintenance within identified wetlands should be conducted during traditionally dry seasons and should avoid the use of heavy equipment or chemicals.

Dated: December 5, 1991.

M. Paul Schmierbach,

Manager, Environmental Quality.

[FR Doc. 91–29705 Filed 12–11–91; 8:45 am]

BILLING CODE 9120–01–M

DEPARTMENT OF TRANSPORTATION

Office of the Secretary

Fitness Determination of Pacific Island Aviation, Inc.

AGENCY: Department of Transportation.

ACTION: Notice of commuter air carrier fitness determination—order 91–12–9, order to show cause.

SUMMARY: The Department of Transportation is proposing to find Pacific Island Aviation, Inc., fit, willing, and able to provide commuter air service under section 419(e) of the Federal Aviation Act.

RESPONSES: All interested persons wishing to respond to the Department of Transportation's tentative fitness determination should file their responses with the Air Carrier Fitness Division, P–56, Department of Transportation, 400 Seventh Street SW., room 6401, Washington, DC 20590, and serve them on all persons listed in Attachment A to the order. Responses shall be filed no later than December 23, 1991.

FOR FURTHER INFORMATION CONTACT: Carol Woods, Air Carrier Fitness Division (P–56, room 6401), U.S. Department of Transportation, 400 Seventh Street, SW., Washington, DC 20590, (202) 366–2340.

Dated: December 6, 1991.

Patrick V. Murphy, Jr.,

Deputy Assistant Secretary for Policy and International Affairs.

[FR Doc. 91–29645 Filed 12–11–91; 8:45 am]

BILLING CODE 4910–62–M

Coast Guard

[CGD 91–062]

International Maritime Organization Ballast Water Control Guidelines

AGENCY: Coast Guard, DOT.

ACTION: Notice of voluntary guidelines.

SUMMARY: In response to the recent isolation of Vibrio cholerae 01, from oysters found in Mobile Bay, Alabama, the U.S. Coast Guard is publishing the guidelines of the Marine Environmental Protection Committee of the International Maritime Organization (IMO) for the control of ballast water to prevent the introduction of unwanted aquatic organisms and pathogens. The Coast Guard requests that mariners voluntarily adopt the standards in an effort to decrease the possibility of further introductions of cholera and other pathogens into U.S. waters.

FOR FURTHER INFORMATION CONTACT: LTJG Jonathan C. Burton, Marine Environmental Protection Division (G–MEP), (202) 267–0426.

SUPPLEMENTARY INFORMATION: In July, 1991, during routine seafood sampling in Mobile Bay, Alabama, the U.S. Food and Drug Administration (FDA) isolated a human bacterial pathogen, namely Vibrio cholerae 01, from oysters and finfish. This pathogen appears to be the

same strain that is responsible for the current epidemic of cholera in South America. This finding has important implications, both for the health of U.S. citizens who consume seafood and for the economic viability of the shellfishing industry in this country.

One way this pathogen could have been transported from South America to Mobile Bay is in ballast water. This hypothesis was tested in November, 1991, when the FDA sampled ballast and waste water on nine ships docked in Mobile and another docked in Pascagoula, Mississippi. The organism was found in samples taken from three ships, all of which had previous ports of call in South America. Although this does not prove that Vibrio cholerae 01 was introduced to the Gulf Coast by ballast, it implies that ballast could act as a method of transport of the pathogen.

The problem of introducing nonindigenous species and harmful pathogens from ballast water is recognized as an international problem by the International Maritime Organization (IMO). On July 4, 1991 the Marine Environmental Protection Committee (MEPC) of the IMO adopted Resolution MEPC.50(31), "International Guidelines For Preventing The Introduction Of Unwanted Pathogens From Ships' Ballast Water And Sediment Discharges".

These international guidelines recognize that there are a range of possible ballast water control options including: retention of ballast water, exchange of ballast water at sea, control of sediment uptake, and discharge of ballast water to reception facilities ashore. Although none of these options have been demonstrated to eliminate bacteria or other pathogens from ballast tanks, they will likely reduce the number of pathogens present. The IMO guidelines acknowledge that other options exist and as further research is conducted they can be considered.

Request for Compliance With IMO Voluntary Ballast Water Guidelines

Mariners are requested to review and voluntarily implement the IMO guidelines to the maximum extent possible. Mariners wishing to report their ballast water treatment, using the form example in the guidelines, may do so by sending completed forms to the nearest U.S. Coast Guard Captain of the Port.

The IMO ballast water guidelines are attached as appendix A.

December 3, 1991.

A.E. Henn,

Rear Admiral, U.S. Coast Guard, Chief, Office of Marine Safety, Security and Environmental Protection.

Appendix A—International Guidelines for Preventing the Introduction of Unwanted Aquatic Organisms and Pathogens From Ships' Ballast Water and Sediment Discharges

1. Introduction

1.1 Studies carried out in several countries have shown that many species of bacteria, plants, and animals can survive in a viable form in the ballast water and sediment carried in ships, even after journeys of several weeks' duration. Subsequent discharge of contaminated ballast water or sediment, into the waters of port States, may result in the establishment of unwanted species which can seriously upset the existing ecological balance. Although other media have been identified for transferring organisms between geographically separated water bodies, ballast water discharge from ships appears to have been among the most prominent. The introduction of diseases may also arise as a result of port State waters being inoculated with large quantities of ballast water containing viruses or bacteria, thereby posing health threats to indigenous human, animal and plant life.

1.2 The potential for ballast water discharges to cause harm was recognized by Resolution 18 of the International Conference on Marine Pollution, 1973, from which conference emerged the MARPOL Convention. Resolution 18 called upon the World Health Organization, in collaboration with the International Maritime Organization, to carry out research into the role of ballast water as a medium for the spreading of epidemic disease bacteria.

1.3 It is the aim of these Guidelines to provide Administrations and Port State Authorities with guidance on procedures that will minimize the risk from the introduction of unwanted aquatic organisms and pathogens from ships' ballast water and sediment. The selection of an appropriate procedure will depend upon several factors, including the type or types of organisms being targeted, the level of risks involved, its environmental acceptability, and the economic and ecological costs involved.

1.4 The choice of procedures will also depend upon whether the measure is a short-term response to an identified problem or a long-term strategy aimed at completely eliminating the possibility of the introduction of species by ballast water. In the short term, operational measures such as ballast water exchange at sea may be appropriate where they have been shown to be effective and are accepted by Port State Authorities and Administrations. For the longer term, more effective strategies, possibly involving structural or equipment modifications to ships, may need to be considered.

2. Definitions

For the purposes of these guidelines, the following definitions apply:

"Administration" means the Government of the State under whose authority the ship is operating.

"Member States" means States that are Members of the International Maritime Organization.

"Organization" means the International Maritime Organization (IMO).

"Port State Authority" means any official or organization authorized by the Government of a port State to administer guidelines or enforce standards and regulations relevant to the implementation of national and international shipping control measures.

3. Application

The Guidelines can apply to all ships, however a Port State Authority shall determine the extent to which these Guidelines do apply.

4. General Principles

4.1 Member States may adopt ballast water and sediment discharge procedures to protect the health of their citizens from foreign infectious agents, to safeguard fisheries and aquaculture production against similar exotic risks and to protect the environment generally.

4.2 Application of ballast water and sediment discharge procedures to minimize the risk of importing unwanted aquatic organisms and pathogens may range from regulations based upon quarantine laws to guidelines providing suggested measures for controlling or reducing the problem.

4.3 In all cases, a Port State Authority must consider the overall effort of ballast water and sediment discharge procedures on the safety of ships and those on board. Regulations or guidelines will be ineffective if compliance is dependent upon the acceptance of operational measures that put a ship or its crew at risk.

4.4 Ballast water and sediment discharge procedures should be practicable, effective, designed to minimize cost and delays to ships, and

based upon these Guidelines whenever practicable.

4.5 The ability of aquatic organisms and pathogens to survive, after transportation in ballast water, may be reduced if significant differences in ambient conditions prevail—e.g. salinity, temperature, nutrients and light intensity.

4.6 If fresh water (FW), brackish water (BW) and fully saline water (SW) are considered, the following matrix provides, in most cases, an indication of probability that aquatic organisms and pathogens will survive after being transferred.

PROBABILITY OF ORGANISMS SURVIVAL AND REPRODUCTION

Receiving waters	Discharged ballast		
	FW	BW	SW
FW	High	Med	Low.
BW	Med	High	High.
SW	Low	High	High.

4.7 The duration of ballast water within an enclosed ballast tank will also be a factor in determining the number of surviving organisms. For example, even after 60 days some organisms may remain in ballast water in a viable condition.

4.8 Because some aquatic organisms and pathogens that may exist in sediments carried by ships can survive for several months or longer, disposal of such sediments should be carefully managed and reported to Port State Authorities.

4.9 In implementing ballast water and sediment discharge procedures, Port State Authorities should take account of all relevant factors.

5. Implementation

5.1 Member States, applying ballast water and sediment discharge procedures, should notify the Organization of specific requirements and provide to the Organization, for the information of other Member States and non-governmental organizations, copies of any regulations, standards or guidelines being applied.

5.2 Administrations and non-governmental shipping organizations should provide the widest possible distribution of information on ballast water and sediment discharge procedures being applied to shipping by Port State Authorities. Failure to do so may lead to unnecessary delays for ships seeking entry to port States where ballast water and sediment discharge procedures are being applied.

5.3 In accordance with paragraph 5.2 above, ship operators and ships' crews could be familiar with the requirements of Port State Authorities with respect to ballast water and sediment discharge procedures, including information that will be needed to obtain entry clearance. In this respect, Masters should be made aware that penalties may be applied by Port State Authorities for failure to comply with national requirements.

5.4 Member States and non-governmental organizations should provide to the Organization, for circulation, details of any research and development studies that they carry out, with respect to the control of aquatic organisms and pathogens in ballast water and sediment found in ships.

5.5 Administrations are encouraged to report to the Organization incidences where compliance with ballast water and sediment discharge procedures required by Port State Authorities have resulted in ship safety problems, unacceptably high costs, or delays to ships.

5.6 Member States should provide, to the Organization, details of annual compliance records for ballast water and sediment discharge procedures that they are applying. These records should report all incidences of non-compliance with regulations or guidelines and cite, by ship's name, official number and flag, all non-complying vessels.

5.7 Member States should notify the Organization of any local outbreaks of infectious diseases or water-borne organisms, that have been identified as a cause of concern to health and environmental authorities in other countries, and for which ballast water or sediment discharges may be vectors of transmission. This information should be relayed by the Organization, without delay, to all Member States and non-governmental organizations. Member States should ensure that problem species, endemic to their waters, are not being transferred from locally loaded ballast water. Masters of ships should be notified of the existence of problem species, including local outbreaks of phytoplankton blooms, and advised to exchange or treat their ballast water and sediment accordingly.

5.8 Member States should determine the environmental sensitivity of their waters to the extent deemed necessary. Ballast water and sediment discharge procedures should take into account the environmental sensitivity of these waters.

6. Ship Operational Procedures

6.1 When loading ballast, every effort should be made to ensure that only clean ballast water is being taken on and that the uptake of sediment with the ballast water is minimized. Where practicable, ships should endeavor to avoid taking on ballast water in shallow water areas, or in the vicinity of dredging operations, to reduce the likelihood that the water will contain silt, which may harbor the cysts of unwanted aquatic organisms and pathogens, and to otherwise reduce the probability that unwanted aquatic organisms and pathogens are present in the water. Areas where there is a known outbreak of diseases, communicable through ballast water, or in which phytoplankton blooms are occurring, should be avoided wherever practicable as a source of ballast.

6.2 When taking on ballast water, records of the dates, geographical locations, salinity and amount of ballast water taken on should be recorded in the ship's log book. To enable monitoring by the Organization and Port State Authorities, a report in the format shown in the appendix to these Guidelines should be completed by the ship's Master and made available to the Port State Authority. Procedures to be followed by the ship should be described in detail in the ship's operational manual. The sample used to determine the salinity of loaded ballast water should be obtained, wherever possible, from the ballast tanks themselves or from a supply piping tap. Surface sea water samples should not be taken an indicative of the water in the ballast tanks since seawater salinity may vary significantly with depth.

6.3 Subject to accessibility, all sources of sediment retention such as anchors, cables, chain lockers and suction wells should be cleaned routinely to reduce the possibility of spreading contamination.

7. Strategies for Preventing the Introduction of Unwanted Aquatic Organisms and Pathogens from Ship's Ballast Water and Sediment Discharges

7.1 General

7.1.1 In determining appropriate strategies for ballast water and sediment discharge procedures, the following criteria, *inter alia*, should be taken into account:

—Operational practicability;
—Effectiveness;
—Seafarer and ship safety;
—Environmental acceptability;
—Water and sediment control;
—Monitoring; and
—Cost effectiveness.

7.1.2 Approaches that may be effective in controlling the incidence and

introduction of aquatic organisms and pathogens, include:

—The non-release of ballast water;
—Ballast water exchange and sediment removal at sea or in areas designated as acceptable for the purpose by the Port State Authority;
—Ballast-water management practices aimed at preventing or minimizing the uptake of contaminated water or sediment in ballasting and deballasting operations; and
—Discharge of ballast water into shore-based facilities for treatment of controlled disposal.

7.1.3 In considering which particular approach, or combination of approaches to use, Port State Authorities should have regard to the factors listed in paragraph 7.1.1.

7.2 *Non-Release of Ballast Water*

The most effective means of preventing the introduction of unwanted aquatic organisms and pathogens from ships' ballast water and sediments is to avoid, wherever possible, the discharge of ballast water.

7.3 *Ballast Water Exchange and Sediment Removal*

7.3.1 In the absence of more scientifically based means of control, exchange of ballast water in deep ocean areas or open seas currently offers a means of limiting the probability that fresh water or coastal species will be transferred in ballast water. Responsibility for deciding on such action must rest with the Master, taking into account prevailing safety, stability and structural factors and influences at the time.

7.3.2 Unlike coastal and estuarine waters that are rich in nutrients and life forms, deep ocean water or open seas contain few organisms. Those that do exist are unlikely to adapt readily to a new coastal or fresh water environment, hence the probability of transferring unwanted organisms, through ballast water discharges, can be greatly reduced by ocean or open sea ballast exchanges preferably in water depths of 2,000 m or more. In those cases where ships do not encounter water depths of at least 2,000 m, exchange of ballast water should occur well clear of coastal and estuarine influences. There is evidence to suggest that, despite contact with water of high salinity, the cysts of some organisms can survive for protracted periods in the sediment within ballast tanks and elsewhere on a ship. Hence, where ballast water exchange is being used as a control measure, care should be taken to flush out ballast tanks, chain lockers and other locations where silt may accumulate, to dislodge and remove such accumulations, wherever practicable.

7.3.3 Care should also be taken when removing sediment deposits while a ship is in port or in coastal waters to ensure that the sediment is not disposed of directly into adjacent waters. Sediment should be removed to landfill locations designated by port State Authority or, alternatively, sterilized to kill all living organisms that it may contain prior to being discharged into local water bodies or otherwise disposed.

7.3.4 Ships likely to be required to exchange ballast during a voyage should take into account the following requirements:

.1 Stability to be maintained at all times to values not less than those recommended by the Organization (or required by the Administration);

.2 Longitudinal stress values not to exceed those permitted by the ship's classification society with regard to prevailing sea conditions; and

.3 Exchange of ballast in tanks or holds where significant structural loads may be generated by sloshing action in the partially filled tank or hold to be carried out in favorable sea and swell conditions such that the risk of structural damage is minimized.

7.3.5 Where the requirements of paragraph 7.3.4 cannot be met during an "at sea" exchange of ballast water, a "flow through" exchange of ballast water may be an acceptable alternative for those tanks. Procedures for exchange of this type should be approved by the Administration.

7.3.6 Where the requirements of paragraph 7.3.4 can be met during an "at sea" exchange of ballast water, before taking on exchange ballast water, tanks should be drained until pump suction is lost. This will minimize the likelihood of residual organism survival.

7.3.7 Where a port State Authority requires that an "at sea" exchange of ballast water be made, and, due to weather, sea conditions or operational impracticability such action cannot be taken, the ship should report this fact to the port State Authority prior to entering its national waters, so that appropriate alternative action can be arranged.

7.3.8 Alternative action will also be necessary in those instances where ships may not leave a continental shelf during their voyage. Unless specific alternative instructions have been issued by a port State Authority applying ballast water and sediment controls, ships should report non-compliance prior to entering the port State's waters.

7.3.9 Port State Authorities applying ballast water exchange and sediment removal procedures may require ships to complete a ballast water control form or some other acceptable system of reporting. A model form for this purpose is in the appendix. Port State Authorities should arrange for such reporting forms to be distributed to ships, together with instructions for completion of the form and procedures for its return to the appropriate authorities.

7.3.10 In those cases where a ship arrives at a port without having carried out an "at sea" ballast water exchange, or has otherwise failed to carry out any alternative procedures acceptable to port State Authorities, the ship may be required to proceed to an approved location to carry out the necessary exchange, treat the ballast water *"in situ"*, seal the ballast tanks against discharge in the port State's waters, pump the ballast water to a shore reception facility, or prove, by laboratory analysis, that the ballast water is acceptable.

7.3.11 To facilitate administration of ballast water exchange and sediment removal procedures on board ships, a responsible officer familiar with those procedures should be appointed to maintain appropriate records and ensure that all ballast water exchange and sediment removal procedures are followed and recorded. Written ballast water and sediment removal procedures should be included in the ships' operational manual.

7.3.12 Port State Authorities applying ballast water exchange and sediment discharge procedures may wish to monitor compliance with and effectiveness of their controls.

7.3.13 Effectiveness monitoring may also be undertaken by port State Authorities, by taking and analyzing ballast water and sediment samples from ships complying with prescribed exchange procedures, to test for the continued survival of unwanted aquatic organisms and pathogens.

7.3.14 Where ballast water or sediment sampling for compliance or effectiveness monitoring is being undertaken, port State Authorities should minimize delays to ships when taking such samples. Use of plankton nets, either by a vertical tow through ballasted deep tanks or cargo holds, or by attachment to an open firemain hydrant, suitably cross-connected to the ballast main, is one suggested means of ballast water sampling. Sediment samples may be taken from areas where sediment is most likely to accumulate such as around outlet pipes, bulkhead and hold corners, etc. to the extent that these are accessible. Appropriate safety precautions must be employed wherever

the taking of water or sediment samples requires tank entry.

7.3.15 Port State Authorities may also wish, subject to relevant safety considerations, to sample sediment in suction wells, chain lockers or other areas where sediment may accumulate.

7.3.16 In some cases, ships bound for ports which apply strategies for preventing the introduction of unwanted aquatic organisms and pathogens from ships' ballast water and sediments may avoid "at sea" exchange of ballast water, or other control procedures, by having their ballast water or harbor source samples analyzed by a laboratory that is acceptable to the port State Authority. Where sampled and analyzed ballast or harbor source water is found to be free from unwanted aquatic organisms or pathogens, an analyst's certificate, attesting to the fact, should be made available to port State Authorities. When analysis of ballast or harbor source water or sediment is being used as a control procedure, port State Authorities should provide Administrations with a target listing of unwanted aquatic organisms or pathogens.

7.3.17 Port State Authorities may sample or require samples to analyze ballast water and sediment, before permitting a vessel to proceed to discharge its ballast water in environmentally sensitive locations. In the event that unwanted aquatic organisms or pathogens are found to be present in the samples, ships may be prohibited from discharging ballast or sediment, except to shore reception facilities or in designated marine areas.

7.4 Ballast Water Management Practices

7.4.1 Port State Authorities may allow the use of appropriate ballast water management practices, aimed at preventing or minimizing the uptake and discharge of contaminated water or sediment in ballasting and deballasting operations. Such practices may be used when adjudged as reducing the risks of introducing unwanted aquatic organisms and pathogens to a level acceptable to Port State Authorities, who may set conditions with which such practices need to comply for this purpose.

7.4.2 Such conditions should include appropriate ballast water management plans, training of ships' officers and crew, and the nomination of key control personnel.

7.5 Shore Reception Facilities

7.5.1 Where adequate shore reception facilities exist, discharge of ship's ballast water in port into such facilities may provide an acceptable means of control. Port State Authorities utilizing this strategy should ensure that the discharged ballast water has been effectively treated before release. Any treatment used should itself be environmentally acceptable.

7.5.2 Reception facilities should be made available for the safe disposal of tank sediment when ships are undergoing repair or refit. Sediment, removed from ballast tanks and other areas of accumulation, should be disposed of in accordance with paragraph 7.3.3 above.

7.5.3 Member States should provide the Organization and ships with information on the locations, capacities, availability, and any applicable fees relevant to reception facilities being provided for the safe disposal of ballast water and removed sediment.

8. Training, Education and Ships Management Plans

8.1 Administrations and non-governmental shipping organizations should ensure that ships' crews are made aware of the ecological and health hazards posed by the indiscriminate loading and discharging of ballast water and of the need to maintain tanks and equipment, such as anchors, cables and hawse pipes, free from sediment.

8.2 Training curricula for ships' crews should include instruction on the application of ballast water and sediment discharge procedures, based upon the information contained in these Guidelines. Instruction should also be provided on the maintenance of log book records, indicating the dates and times of ballast water loading, exchange or discharge, salinity and the geographical location where such operations are carried out.

8.3 Ships' crews should receive adequate instruction on the methods of ballast water and sediment discharge procedures being applied on their ship, including appropriate safety training in the relevant procedures.

8.4 Ballast water managment plans should be incorporated in ships' operational manuals for the guidance of the ships' crews. Such plans should include, but not necessarily be limited to, information on the following:

—Ballast water loading and discharging procedures and precautions;
—Ballast water and sediment sampling and testing;
—Controls applied by port State Authorities;
—Reporting and information requirements;
—Exchange and treatment options or requirements;
—Crew safety guidelines;
—Sediment disposal arrangements; and
—Crew education and training.

8.5 Ships' operational manuals should include reference to these Guidelines and to the need to comply with any ballast water and sediment discharge procedures imposed by port State Authorities.

9. Future Considerations

9.1 There is a clear need to research and develop revised and additional measures, particularly as new information on organisms and pathogens of concern becomes available. Areas for further research include, *inter alia*:

—Treatment by chemicals and biocides;
—Heat treatment;
—Oxygen deprivation control;
—Tank coatings;
—Filters; and
—Ultraviolet light disinfection.

It must be made clear, however, that there is a lack of research knowledge and practical experience on the cost, safety, effectiveness and environmental acceptability of these possible approaches. Any proposed chemical or biocidal treatments should be environmentally safe and in compliance with international conventions. Authorities carrying out or commissioning research studies into these or other relevant areas are encouraged to work cooperatively and provide information on the results to the Organization.

9.2 In the longer term and to the extent possible, changes in ship design may be warranted to prevent the introduction of unwanted aquatic organisms and pathogens from ships. For example, subdivision of tanks, piping arrangements and pumping procedures should be designed and constructed to minimize uptake and accumulation of sediment in ballast tanks.

9.3 Classification societies are urged to include provisions for ballast water and sediment discharge procedures in their rule requirements.

Ballast Water Control Report Form

(To be completed by ship's Master prior to arrival and provided to Port Authority upon request.)

Name of Ship: _____
Port of Registry: _____
Official No. or Call Sign: _____
Owners/Operators: _____
Agent: _____
IMO Guidelines Carried? YES_____ NO_____
Control Action Taken?
_____ Non-release of ballast
_____ Ballast water exchange
_____ Ballast water management practices
_____ Use of shore reception facilities
_____ Other (specify)
_____ Nil

INFORMATION ON BALLAST WATER BEING CARRIED

Tank location	Quantity Tons	Geographaic origin of carried ballast		Salinity of original sample (specific gravity)	Intended discharge Port		If exchanged, where was ballast loaded?		Salinity of reballasted sample (specific gravity)	Controls used where ballast not exchanged
		Latitude	Longitude		Place	Date	Latitude	Longitude		
Fore Peak										
Aft Peak										
Double Bottom										
Wing Tanks										
Side Tanks										
Deep Tanks										
Cargo Holds										
Other (Specific)										

(PLEASE PRINT)
Master's Name: _____
Date: _____
Port Location: _____
Master's Signature: _____

[FR Doc. 91-29726 Filed 12-11-91; 8:45 am]
BILLING CODE 4910-14-M

Federal Highway Administration

Environmental Impact Statement: Lincoln, Lancaster County, NE

AGENCY: Federal Highway Administration (FHWA), DOT.

ACTION: Notice of intent.

SUMMARY: The FHWA is issuing this notice to advise the public that an environmental impact statement will be prepared for a proposed roadway project in the City of Lincoln, Lancaster County, Nebraska.

FOR FURTHER INFORMATION CONTACT: Mr. Philip E. Barnes, District Engineer, Federal Highway Administration, Federal Building, room 220, 100 Centennial Mall North, Lincoln, Nebraska 68508, Telephone: (402) 437-5521. Mr. Arthur Yonkey, Project Development Engineer, Nebraska Department of Roads, P.O. Box 94759, Lincoln, Nebraska 68509, Telephone: (402) 479-4795. Roger Figard, Lincoln Public Works Department, County-City Building, 555 So. 10th Street, Lincoln, Nebraska 68508.

SUPPLEMENTARY INFORMATION: The FHWA, in cooperation with the Nebraska Department of Roads, and the City of Lincoln Department of Public Works will prepare an environmental impact statement (EIS) for a proposal to construct a Holdrege Street bypass in the City of Lincoln, Nebraska. The proposed facility will serve transportation demands of the area including major traffic generators: Nebraska State Fairgrounds, Devaney Sports Center, Nebraska National Guard, University of Nebraska, and the Central Business District. The project will provide the only direct east-west and north-south traffic facilities in the area, and will remove at-grade rail crossings.

Alternatives under consideration include (1) taking no action; and (2) the construction of the proposed roadway.

The proposed construction will consist of a rail overpass on Holdrege Street from 16th Street to 19th Street; widening Holdrege Street to a multi-lane facility from 19th Street to 27th Street; the construction of a rail overpass extending from 14th and Court Streets southeasterly to "Y" Street on new location between 16th and 19th Streets; and providing a roadway in the 19th to 22nd Street corridor connecting to U.S. Highway 34. Much investigation and interaction with agencies, the University of Nebraska, and neighborhoods will be necessary to develop viable alternates. The number of lanes for proposed overpasses and roadways is undetermined. Project length will vary with the alternates developed. The project would involve the North Bottoms District (residential area eligible for the National Register of Historic Places), and the Antelope Creek floodplain.

Coordination with affected agencies, railroads, businesses, University of Nebraska, and neighborhoods will be initiated and scoping meetings will be held. A public meeting followed by a public hearing will be held in the project area after completion of the Draft EIS. Public notice will be given of the meeting and hearing.

To ensure that the full range of issues related to this proposed action are addressed and all significant issues identified, comments and suggestions are invited from all interested parties. Comments and questions concerning this proposed action and the EIS should be directed to the FHWA or the Nebraska Department of Roads at the address provided.

(Catalog of Federal Domestic Assistance Program Number 20.205, Highway Planning and Construction. The regulations implementing Executive Order 12372 regarding intergovernmental consultation on federal programs and activities apply to this program.)

Philip E. Barnes,

District Engineer, Nebraska Division, Federal Highway Administration, Lincoln, Nebraska.

[FR Doc. 91-29713 Filed 12-11-91; 8:45 am]
BILLING CODE 4910-22-M

DEPARTMENT OF VETERANS AFFAIRS

Poverty Threshold

AGENCY: Department of Veterans Affairs.

ACTION: Notice.

SUMMARY: The Department of Veterans Affairs (VA) is hereby giving notice of the weighted average poverty threshold in 1990 for one person (unrelated individual) as established by the Bureau of the Census.

DATES: The 1990 threshold is for consideration effective October 8, 1991, the date on which we notified our regional offices of such amount.

FOR FURTHER INFORMATION CONTACT: John Bisset, Jr., Consultant, Regulations Staff, Compensation and Pension Service, Veterans Benefits Administration, Department of Veterans Affairs, 810 Vermont Avenue, NW., Washington, DC 20420, (202) 233-3005.

SUPPLEMENTARY INFORMATION: VA published a final regulation amending 38 CFR 4.16(a) in the **Federal Register** of August 3, 1990, pages 31579-80. The amendment provided that marginal employment generally shall be deemed to exist when a veteran's earned annual income does not exceed the amount established by the Bureau of the Census as the poverty threshold for one person. VA noted that the weighted average poverty threshold in 1988 for one person (unrelated individual) as established by the Bureau of the Census was $6,024 and stated we would publish subsequent poverty threshold figures as notices in the **Federal Register.**

The Bureau of the Census recently published the weighted average poverty threshold for 1990. The threshold for one person (unrelated individual) is $6,652.

Dated: December 4, 1991.

Edward J. Derwinski,

Secretary of Veterans Affairs.

[FR Doc. 91-29770 Filed 12-11-91; 8:45 am]

BILLING CODE 8320-01-M

Sunshine Act Meetings

Federal Register
Vol. 56, No. 239
Thursday, December 12, 1991

This section of the FEDERAL REGISTER contains notices of meetings published under the "Government in the Sunshine Act" (Pub. L. 94-409) 5 U.S.C. 552b(e)(3).

COMMODITY FUTURES TRADING COMMISSION

TIME AND DATE: 10:00 a.m., Wednesday, December 18, 1991.

PLACE: 2033 K Street., NW., Washington, D.C., 8th Floor Hearing Room.

STATUS: Closed.

MATTERS TO BE CONSIDERED: Judicial Session.

CONTACT PERSON FOR MORE INFORMATION: Jean A. Webb, 254–6314.

Jean A. Webb,

Secretary of the Commission.

[FR Doc. 91–29876 Filed 12–10–91; 2:52 pm]

BILLING CODE 6351–01–M

NATIONAL COMMISSION ON LIBRARIES AND INFORMATION SCIENCE

DATE AND TIME: January 9 and 10, 1992, 9:00 a.m. to 3:30 p.m. and 9:00 a.m. to 4:00 p.m., respectively.

PLACE: Hotel Washington, 15th and Pennsylvania Avenue, Washington, D.C.

STATUS: Open.

MATTERS TO BE DISCUSSED:

January 9, 1992
- Chairman's Report
- Executive Director's Report
- WHCLIS Executive Director's Report
- NCLIS Administrative Matters
- Library Statistics Program
- International Committee Report
- Library & Information Services to Native Americans Report
- Commissioners' Information Sharing Session

January 10, 1992
- Recognition Awards Committee Report
- Plans for NCLIS Retreat
- National Library Networking
- NCLIS Post-WHCLIS Planning Tour, World Bank Group
- NCLIS Organization Meeting
- Other Business
- Public Comment

Special provisions will be made for handicapped individuals by calling Barbara Whiteleather (202) 254–3100, no later than one week in advance of the meeting.

FOR FURTHER INFORMATION CONTACT: Barbara Whiteleather, Special Assistant to the Director, 1111 18th Street, N.W., Suite 310, Washington, D.C. 20036 (202) 254–3100.

Dated: December 6, 1991.

Peter R. Young,

NCLIS Executive Director.

[FR Doc. 91–29879 Filed 12–10–91; 3:37 pm]

BILLING CODE 7527–01–M

Corrections

Federal Register
Vol. 56, No. 239
Thursday, December 12, 1991

This section of the FEDERAL REGISTER contains editorial corrections of previously published Presidential, Rule, Proposed Rule, and Notice documents. These corrections are prepared by the Office of the Federal Register. Agency prepared corrections are issued as signed documents and appear in the appropriate document categories elsewhere in the issue.

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Project Nos. 2145-021, et al.]

Hydroelectric Applications (P.U.D. No. 1 of Chelan Co., Washington, et al.); Applications

Correction

In notice document 91-28092 beginning on page 58888, in the issue of Friday, November 22, 1991, make the following correction:

On page 58894, in the first column, under 21.b., "*Project No.*: 111876-000." should read "*Project No.*: 11187-000.".

BILLING CODE 1505-01-D

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

21 CFR Parts 803 and 807

[Docket No. 91N-0295]

Medical Devices; Medical Device, User Facility, Distributor, and Manufacturer Reporting, Certification, and Registration

Correction

In proposed rule document 91-28377, beginning on page 60024, in the issue of Tuesday, November 26, 1991, make the following corrections:

1. On page 60024, in the first column, under **DATES:**, in the second line, "1991" should read "1992".

2. On page 60027, in the 1st column, in the 3rd full paragraph, in the 16th line, "of" should read "or".

3. On page 60031, in the second column, under the heading **XI. Request for Comments**, in the second line, "1991" should read "1992".

§ 807.21 [Corrected]

4. On page 60038, in the second column, in § 807.21(a), in the fourth line, "§ 807.2(c)" should read "§ 807.3(c)".

BILLING CODE 1505-01-D

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

Office of the Secretary

24 CFR Part 10

[Docket No. R-91-1568; FR-3115-P-01]

Rulemaking Policies and Procedures—Public Comment Periods

Correction

In proposed rule document 91-27298 beginning on page 57869, in the issue of Thursday, November 14, 1991, make the following correction:

On page 57869, in the third column, under **DATES:**, the second line should read "January 16, 1992.".

BILLING CODE 1505-01-D

NUCLEAR REGULATORY COMMISSION

10 CFR Part 13

RIN 3150-AD71

Program Fraud Civil Remedies Act

Correction

In rule document 91-22446 beginning on page 47132 in the issue of Wednesday, September 18, 1991, make the following corrections:

§ 13.9 [Corrected]

1. On page 47138, in the second column, in § 13.9(c), in the fifth line from the bottom, "for" should read "For".

§ 13.14 [Corrected]

2. On page 47139, in the first column, in § 13.14(a), in the first and fourth lines, "investigation" should read "investigating" each time it appears.

BILLING CODE 1505-01-D

RAILROAD RETIREMENT BOARD

1992 Monthly Compensation Base and Other Determinations

Correction

In notice document 91-28041, beginning on page 58718, in the issue of Thursday, November 21, 1991, make the following correction:

On page 58719, in the third column, in the third full paragraph, in the second line, "$55.500." should read "$55,500.".

BILLING CODE 1505-01-D

DEPARTMENT OF TRANSPORTATION

Coast Guard

46 CFR Part 401

[CGD 89-104]

RIN 2115-AD47

Great Lakes Pilotage Rates

Correction

In proposed rule document 91-29256 beginning on page 63911 in the issue of Friday, December 6, 1991, make the following correction:

On page 63912, in the third column, in the table, in the third column (Estimated 1991 pilots), insert "13" after the rule as the total for "5" and "8" (*District 2*).

BILLING CODE 1505-01-D

DEPARTMENT OF THE TREASURY

Bureau of Alcohol, Tobacco, and Firearms

27 CFR Part 5

[T.D. ATF-319; Re: T.D. ATF-311, T.D. ATF-306, Notice Nos. 716, 403, 410, 583; 91F009P]

RIN 1512-AA10

Vodka: Deferral of Compliance Date

Correction

In rule document 91-29003 appearing on page 63398, in the issue of Tuesday, December 3, 1991, in the first column, the Docket Number, should read as set forth above.

BILLING CODE 1505-01-D

federal register

Thursday
December 12, 1991

Part II

Federal Communications Commission

47 CFR Parts 2, 73, and 90
Radio Broadcast Service, AM Technical Assignment Criteria; Final Rule

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Parts 2, 73, and 90

[MM Docket No. 87-267, FCC 91-303]

Radio Broadcast Service, AM Technical Assignment Criteria

AGENCY: Federal Communications Commission.

ACTION: Final rule.

SUMMARY: This Report and Order (Report) describes the actions resulting from the Commission's comprehensive review of the many regulatory areas which affect the AM service. The three essential and mutually supporting elements which make up the strategy proposed in the Notice of Proposed Rule Making (55 FR 31607, August 3, 1990) and adopted in substantial part in this Report are: (1) Technical Standards, (2) Migration, and (3) Consolidation. The Commission also takes several non-technical actions: (1) Permitting the issuance of tax certificates in conjunction with voluntary arrangements; and (2) relaxing the multiple ownership rules for those proposing changes in facilities that, in either case, would result in a significant reduction of interference in the existing AM band. Additionally the Commission (1) relaxes the rules pertaining to Travelers Information Stations to allow for the authorization (on a secondary basis) of such stations on any assignable frequency in the AM band; and (2) discusses voluntary receiver standards.

Certain other rule changes described in the Notice of Proposed Rule Making (Notice) were adopted in other proceedings with effective dates that were deferred pending the release of this Report. (See the Report and Order in MM Docket No. 89-46, 55 FR 32922, August 13, 1990; the Report and Order in MM Docket No. 88-510, 55 FR 32944, August 13, 1990; and the Report and Order in MM Docket No. 88-508, 55 FR 32925, August 13, 1990. The rules adopted in these proceedings are incorporated into the amendatory text of this Report. Finally, the "AM freeze" that has been in effect since last year, pending adoption of this Report is lifted as of the effective date of the Report.

In view of the undisputed public importance of the AM service, reflected in the record of this proceeding, the Commission believes that innovative and substantial regulatory steps, such as those adopted in this Report, must be taken to ensure AM's health and survival.

EFFECTIVE DATE: Contingent upon approval by the Office of Management and Budget; Notice of the specific effective date will be announced in the **Federal Register** when such date becomes available.

FOR FURTHER INFORMATION CONTACT: Larry Olson, Mass Media Bureau, Policy and Rules Division, (202) 632-6955.

SUPPLEMENTARY INFORMATION:

Paperwork Reduction Statement

Public reporting burden for Form 301 is estimated to vary from 72 hours to 302 hours, 45 minutes, with an average of 192 hours and 31 minutes per respondent, public reporting burden for § 73.30 is estimated to average 2 hours per respondent, public reporting burden for § 73.37 is estimated to average 7 hours per respondent, public reporting burden for § 73.3517 is estimated to average 30 minutes per respondent. These estimates include the time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information. Send comments regarding this burden estimate or any other aspect of this collection of information, including suggestions for reducing the burden, to the Federal Communications Commission, Information Resources Branch, room 416, Paperwork Reduction Project, Washington, DC 20554, and the Office of Management and Budget, Paperwork Reduction Project, Washington, DC 20503.

This is a synopsis of the Commission's Report and Order in MM Docket No. 87-267 adopted September 26, 1991, and released October 25, 1991.

The complete text of this Report and Order is available for inspection and copying during normal business hours in the FCC Dockets Branch (room 230), 1919 M Street, NW., Washington, DC, and also may be purchased from the Commission's copy contractor, Downtown Copy Center, at (202) 452-1422, 1919 M Street, NW., room 246, Washington, DC 20554.

Synopsis of Report and Order

1. This Report acts on a three-part strategy aimed at resuscitating the flagging AM radio service. Over the years, an increase in channel congestion and interference coincident with a decline in the fidelity of AM receivers has resulted in a shift of AM listeners to newer mass media services that offer higher technical quality and better aural fidelity. Nonetheless, the record established in this proceeding indicates that AM radio continues to hold a valuable place on the communications landscape, and provides a significant number of outlets that contribute to the vital diversity of viewpoints and programming available to Americans. The Commission's goal in opening this proceeding was to facilitate an overall improvement and revitalization of the AM broadcast service, and to effectuate the necessary union of new AM spectrum between 1605 and 1705 kHz with the existing AM band (535 to 1605 kHz).

2. To provide a specific structure for these revitalization efforts, the Commission defined two models of AM station operation in the Notice of Proposed Rule Making (Notice), one for operation in the expanded band and one for operation in the existing band. Model I parameters, for expanded band stations, are intended to take advantage of the fact that there are currently no stations in the expanded band, and therefore define idealized facilities. Model I parameters include fulltime operation with stereo, technical quality competitive with FM, 10 kW daytime power, 1 kW nighttime power, non-directional (or simple directional) antenna, and a 400-800 km spacing between co-channel stations. Model II parameters, for stations in the existing band, reflect the realities in that band—particularly dense station population coupled with wide variations in: Spacing, power, antenna patterns, and interference protection—and represent those attributes toward which the service can reasonably aspire. These include fulltime operation, competitive technical quality, and wide area daytime coverage with nighttime coverage duplicating at least 15% of daytime coverage.

3. The three elements to the strategy adopted in substantial part in this Report are: (1) Technical standards, in which the Commission implements new and revised AM technical standards that should reduce over time the interference with which AM broadcasters must contend in their primary service areas; (2) migration, in which the Commission selectively opens the ten newly available frequencies in the expanded band (1605-1705 kHz) to those existing AM stations which significantly contribute to congestion and interference in the existing band; and (3) consolidation, which affords broadcasters greater latitude and incentive to reduce interference through non-technical means.

4. In the area of technical standards, the Commission most notably: (1) Increases the first and second adjacent channel protection ratios to reduce adjacent channel interference and also

to promote the development of receivers with higher audio fidelity; (2) refines the methodology of calculating nighttime coverage and interference to more accurately measure interference effects, which should lead to an improvement in nighttime reception; and (3) in some cases, requires a 10% interference reduction when modifications are made to AM station facilities, which should gradually reduce the overall presence of interference.

5. As part of the technical standards segment of this action, the Commission modifies those regulations that, by permitting a decline in the quality of existing service, no longer serve to protect the public interest. While the Commission separately addresses these technical items for the purposes of discussion, it remains acutely aware of their interrelationships and their potential impact on the AM service if considered individually.

6. First, under the category of technical standards, the Commission considers reclassification/power increases. In reaching a decision on this issue, the Commission addressed three elements that are related to the reclassification process. They are: Administrative convenience, changes to protection criteria, and changes in power level restrictions.

7. Administrative convenience, in this instance refers to the process by which the Commission, in administering the AM service, requires considerable coordination with other countries, compliance with several treaties, and participation in a complex notification process with international bodies. The Report finds that confusion would be avoided and administrative burdens on the Commission and on the industry would be greatly eased by adoption of a single classification and nomenclature system. Thus, the Commission changes the current system of AM station classification to conform to the international agreements to which the U.S. is party. Class I stations are redesignated as Class A stations; Class II and II stations become Class B; and Class IV stations become Class C. The Commission also establishes a fourth class of station, Class D, which includes stations that do not have fully protected unlimited-time operation. This last class consists of daytime-only stations, including those that operated with extended hours authorizations, namely current Class II–D, Class II–S, Class III–D, and Class III–S stations. Creation of this separate class helps to focus attention on a category of stations which has its own set of special needs. These stations will be notified internationally as Class B.

8. Stations migrating to the expanded band will be categorized as nominal Class B facilities. Use of the term "nominal Class B" facility is intended to distinguish expanded band stations, awarded by allotment plan procedures, from existing band Class B facilities, governed by assignment procedures. Service contour protection requirements given in § 73.182 of the rules will not apply initially among nominal Class B facilities in the expanded band since the stations spacings prescribed in the allotment plan will form the basis for interference protection rights unless otherwise specified. Because of the adjacent channel relationships, contour protection requirements will apply from the effective date of this Report between stations in the expanded band on channels 1610, 1620, and 1630 kHz and stations in the existing band on 1600, 1590, and 1580 kHz. Additionally, nominal Class B stations in the expanded band are limited by international agreement to a maximum power of 10 kW, as opposed to the 50 kW limit for most existing-band Class B stations.

9. Next, in the Notice, the Commission found that most stations could be reclassified easily, but recognized that certain adjustments in nighttime protection levels for some sub-classes would be necessary. Therefore, the Notice proposed to adopt a nighttime protection level of 2.0 mV/m for all Class II–A, II–B, II–C, and III stations, noting that this would constitute an obvious improvement in protection for all but the Class II–A stations. Only one Class II–A station out of nearly 5,000 AM stations has been identified as being adversely impacted by this proposal. While it is disconcerting to adopt rules that would permit interference to this or any other station, the Commission finds that no new information has been provided that would justify altering its initial conclusion. The Commission continues to believe that the practical impact of the potential for a minor increase in interference to a single station is not of an overriding nature, especially when balanced against the overall benefits of reclassification for the entire AM service. Furthermore, the overall improved protection criteria adopted in this Report could act to offset this apparent effect. Accordingly, the Commission adopts revised nighttime protection levels as proposed.

10. As to the power level question, in order to be further consistent with international agreements, the Notice proposed to increase the maximum power of Class B stations to 50 kW. The Notice indicated that this change would allow stations, currently limited to a power no greater than 5 kW, an opportunity to increase coverage provided that all other technical criteria are met. In practical terms, this would permit stations increased flexibility in tailoring station power and other characteristics to specific needs. The concerns of some commenters regarding additional interference that might result from this action are misplaced because any proposal for an increase in power would have to comply with all applicable interference provisions of the rules, as revised in this proceeding. Accordingly, the Commission's Rules are revised to increase the maximum power for Class B stations, conforming the domestic rules to the international agreements to which the United States is party and bringing U.S. stations to parity with those of other countries.

11. The Report next examines normally protected contours. As explained in the Notice these contours are not only important to individual stations because of their direct relationship to market value and sales price, they also serve as a basis for the Commission's determination of an application's acceptability. There are four matters to resolve at this stage. They are: (1) The Commission's tentative decision to make no changes in normally protected daytime contours; (2) the Commission's tentative decision to make no changes in normally protected contours at night, except in the case of reclassification; (3) the Commission's proposal to eliminate the exception for the first AM facility in a community; and (4) the commenters' suggestion that power increases and changes to normally protected contours are the solution to the problem.

12. The *Notice of Inquiry* in this proceeding (52 FR 31795, August 24, 1987) solicited comment on whether, weighing the current habits of the listening public, the field strength values of these protected contours should be redefined. The overwhelming majority of commenters agreed that the contours should not be changed. Thus, the Notice tentatively concluded that changing these contours would not significantly improve AM service and proposed to leave them unchanged with one exception.

13. The one minor exception to the Commission's tentative conclusion not to change the protected contours was related to the proposal to reclassify stations and adjust nighttime protection levels accordingly. The Notice proposed

to modify the baseline nighttime protection contour for Classes II–A, II–B, II–C and Class III full time stations to uniformly protect the 2.0 mV/m contour. This change would bring a measure of consistency to the new Class B category and would have a minimal impact on assignments.

14. The Report finds that adoption of the proposed value of 2.0 mV/m for the normally protected contour for Classes II and III stations at night, as set forth in the Notice, advances the objective of improving the AM service. It further concludes that modification of any other protected contour would stray significantly from the original purpose of reducing interference levels within the AM band. Because there is now a single class of station that includes the previous Class II and Class III stations, the Commission needs to pick a value suitable for protecting all of the stations in that class. A higher value, such as 5 mV/m, would expose stations currently protected to values less than 5 mV/m to more interference and a loss of service. A value of 2.0 mV/m for the normally protected nighttime contour is the highest value the Commission can select which will preserve the service of essentially all Class II and Class III stations.

15. In a related matter, the Notice also proposed elimination of § 73.37(b), which effectively is an exception to the protected contour criteria and which allows interference within the daytime 0.5 mV/m normally protected contour (up to the 1 mV/m contour) of a station that is or will be the first licensed AM station in a community. The Commission continues to believe that this rule encourages substandard operations and permits increased AM congestion and distorted service areas. Thus, the Report deletes § 73.37(b) of the Commission's rules.

16. The Report now considers E_{min} and noise. The Notice briefly discussed the relationship between the minimum usable field strength, or E_{min},[1] and noise, both atmospheric and man-made. The Notice also discussed various Commission actions taken in the past several years which related to noise within the AM band. The Notice tentatively concluded that there was no compelling reason to revise these factors.

17. The Commission carefully considered all of the widely divergent comments submitted with respect to E_{min} and noise, and concludes that revision of these factors is not warranted. Selection of an appropriate minimum usable field strength value is a complex matter dependent on many variables. Therefore, while it may be true that in some areas of the country, under certain circumstances, the currently protected value of 0.5 mV/m is insufficient to provide an adequate signal, it is clear that in many areas, under other circumstances, it is an appropriate value. It is not evident, based upon the totality of the record in this proceeding, that selection of any other protected contour value would, on balance, provide a more accurate benchmark.

18. Similarly, the Commission cannot conclude from the evidence presented that the 0.1 mV/m contour is inadequate to provide Class I service. It finds that the evidence submitted not of sufficient reliability for the Commission to conclude with certainty that Class I service does not exist in many cases out to the 0.1 mV/m protected contour and thus should not be protected.

19. The intent of critical hours protection for Class I facilities has always been to provide an adequate measure of protection to the wide area service of such stations during the transitional hours after local sunrise and before local sunset when neither daytime nor nighttime propagation characteristics are fully in effect. The Commission's experience over the years has shown that the critical hours protection scheme has successfully provided a reasonable degree of interference protection for this time of day and, therefore, will remain unchanged.

20. Accordingly, the values of minimum usable field strength, E_{min}, will remain unchanged. Protection requirements for Class I facilities will also remain unchanged with respect to both daytime and critical hours protection.

21. Next, the Report examines protection ratios. The Notice proposed no change to the current co-channel protection ratio of 26 dB. For the first adjacent channel, the current protection ratio is 0 dB, groundwave-to-groundwave. The Notice proposed to change this ratio from 0 dB to 16 dB for the protection of daytime and nighttime groundwave service. Also, the Notice proposed that both groundwave and skywave service of Class I stations be protected from adjacent channel skywave interference. In this respect, the Notice proposed to modify the skywave to groundwave protection ratio from—13.98 dB to 16 dB and to include a skywave to skywave protection ratio of 0 dB, a type of interference protection not previously specified. For the second and third adjacent channel, the Notice proposed no change.

22. Regarding the co-channel protection ratio, the Commission considers the record in this proceeding to clearly indicate that no change is required. While the Commission agrees with the comments indicating that "talk" programming requires more than 26 dB of co-channel protection, with the current level of protection, high quality reception of "talk" programming is possible beyond current city-coverage signal levels.

23. With respect to the appropriate level of first adjacent channel protection, the Report first discusses the daytime groundwave service case. The Commission continues to protect service to the normally protected contours (0.1 mV/m for Class I stations; 0.5 mV/m for other classes) and will provide increased protection required for wideband reception. However, as demonstrated in the comments, the adoption of the required 16 dB of additional protection at the normally protected contour (e.g., 0.5 mV/m) would largely preclude most needed facilities modifications, thus effectively freezing the AM band at the current level of adjacent channel interference.

24. Nonetheless, adjacent channel interference is a real concern, particularly for wide band receivers, and some improvement is needed. A pragmatic solution is suggested by the many commenters who stated that a field strength of 2 mV/m is required for satisfactory wide band reception. Since that is 12 dB greater than a normally protected groundwave contour of 0.5 mV/m, a modest increase in the adjacent channel protection ratio, applied at the 0.5 mV/m contour, will serve to enhance both narrow band and wide band reception. Accordingly, the Commission is adopting an adjacent channel protection ratio of 6 dB to be applied at the normally protected contour which will, in practice, provide 18 dB or greater protection to wide band service. Although this is slightly higher than the 16 dB figure mentioned above, the Commission considers this 6 dB increase in protection to be the minimum change in protection required to realize improved reception. As improved receivers are marketed with wide and narrow bandwidth capabilities, listeners will be able to realize an improved and more competitive technical quality wherever AM improvement is achieved in practice.

[1] The value of E_{min} represents the minimum field strength necessary to permit a desired reception quality in the presence of atmospheric and man-made noise.

25. The circumstances surrounding first adjacent channel nighttime protection are significantly different from those of the daytime. The Commission's proposal for daytime adjacent channel protection represents a tightening of the existing protection standard contained in the rules which is applied in a single-signal manner. With the exception of protection to clear channel stations, no nighttime adjacent channel standard now exists. Because the Commission is concerned about the restrictive effects of creating an entirely new adjacent channel standard for nighttime operations, it has reconsidered the initial proposal of a 16 dB value. The Commission is persuaded by the commenters who argue that adoption of such a high ratio would impair the ability of stations to make needed facilities modifications. This is particularly so since the first adjacent channel standard represents a limitation where none previously existed. In order to maximize flexibility, and recognizing that scientific studies show that adjacent channel interference should be reduced in order to improve the AM service, the Commission is adopting a more moderate value of 6 dB.

26. The Commission's proposal for 0 dB first adjacent channel protection to skywave service was not opposed. However, this proposal would preclude hundreds of Class B stations from making any facilities modifications because of the extremely large skywave service areas of Class A stations on adjacent channels. Therefore, the Commission believes that this standard would be unrealistic and counterproductive and it declines to extend adjacent channel protection to Class A stations' nighttime skywave service.

27. The comments have persuaded the Commission to revise its thinking regarding the second adjacent channel protection levels. After careful analysis, the Commission is adopting a prohibition of overlap of the 5 mV/m contours of second adjacent channel stations. Such an action would insure that, within the daytime city coverage contours, full protection from second adjacent channel interference would be obtained. This standard would require station separations greater than those currently required, and is consistent with the NRSC standard.

28. No opposition was received to the proposal in the Notice to leave undisturbed the current third adjacent channel protection standard. The Commission continues to believe that this standard properly balances a station's protection and service requirements. The Commission is maintaining the existing standard of prohibiting overlap of 25 mV/m contours of such stations.

29. Regarding nighttime interference calculations, the Notice of Inquiry (*Inquiry*) questioned whether it would be appropriate to limit increased interference from other stations by considering adjacent nighttime skywave interference in the RSS calculations and by reducing the RSS exclusion value from 50% to 25%. The reaction was mixed, but generally construed the Commission's alternatives to be an insufficient response to the considerable difficulties facing the AM service.

30. In view of the response to the Inquiry, the Notice proposed even tighter protection criteria. The Notice proposed to eliminate entirely the RSS "50% exclusion" methodology and to consider, instead, all signals as potential sources of interference. (In effect, the Commission proposed to use an RSS "0% exclusion" method.) Also, the Notice proposed to consider adjacent channel signals in the interference calculations. The Notice further proposed that each station's individual limitation toward any other station not exceed 1.0 mV/m, with appropriate adjustments for protecting skywave service of Class I stations. Additionally, the Notice proposed to require existing stations that already exceeded this 1 mV/m threshold to reduce their signal to other stations by 10% in order to receive an authorization to modify their facilities. Finally, although no longer required for determination of station protection under our proposal, the Commission proposed that RSS calculations (0% exclusion) would be used to evaluate city coverage of a station and to compute the ranking factor for migration preference purposes.

31. The record in this proceeding convinces the Commission that the proposals set forth in the Notice are sound, reflect the best predictors of interference and service available today, and provide a mechanism to not only prevent continually increasing interference in the existing AM band but also, in some cases, to reduce existing levels of interference. Two of these proposals are fundamental to the Commission's efforts to improve AM nighttime interference calculations. They are RSS 0% exclusion and inclusion of adjacent channel signals. It is noteworthy that the record supports these concepts. The disagreement is not with the concepts themselves but rather with the impact of their application, most notably the lack of flexibility and reduced coverage showings.

32. After further evaluation of the proposals, the Commission recognizes that a key element of these proposals, the shift to the single signal protection concept, is also most difficult to achieve without impacting the ability of some existing stations to modify their operations. The Commission agrees with commenters that the threshold level of 1 mV/m for protection purposes may be ideal, but in many instances it is impractical. The ultimate question is what is the test for significance for these types of situations. The Commission finds that a major difficulty inherent in the proposed rules relates to the need to find a specific value that would define interference as significant and trigger the need for a 10% reduction in signal level. The Commission concludes, that in a mature band such as the AM band, a single value that would represent a significant increase in interference is extremely elusive because of the many various combinations that require consideration. Also, the Commission is not convinced that the discovery of a single value would be translated into tangible benefits since the concept requires voluntary actions of stations (i.e., facilities modifications), the type and quantity of which cannot be predicted, as a prerequisite for a 10% signal reduction. Thus, the Commission is adopting a modified proposal that incorporates the basic ideas and adjusts the remaining ones.

33. The modified approach the Commission has developed adheres to its basic goal of improving the AM service by reducing or restricting increased interference. In effect, this approach provides a balance between the ideal and the pragmatic. The modified approach adopted is as follows. In the determination of nighttime interference, all skywave signals (co-channel and first adjacent channel) are considered. The single signal concept is replaced with an RSS concept that distinguishes among three significant levels of interference. First, the highest interferers are those that contribute to another station's RSS (50% exclusion); these interferers would be required to reduce their contribution to that RSS by 10% if and when they apply for a change in facilities. Second, the next level of interferers are those that contribute to the RSS (25% exclusion) but not the RSS (50% exclusion); these stations would be authorized facilities changes if no increase in radiation is involved. Finally, the lowest level of interferers are those that are no greater than the RSS (25% exclusion) and which would be permitted to increase radiation as long as the RSS (25% exclusion)

threshold is not equalled or exceeded. Essentially, the Commission has used the well-known RSS method with 50% and 25% exclusion values to classify existing co-channel and adjacent channel stations as high, medium and low interferers. High interferers must reduce interference, medium interferers may preserve the status quo, and low interferers may make modest increases. Finally, a new station may be authorized only if it qualifies as a low interferer with respect to any other station on the same or first adjacent channel.

34. The Commission turns now to the relevant concerns of the commenters and the impact of the Commission's modified approach. Three points stand out—flexibility, coverage, and noise. Of the three, flexibility is the most difficult to resolve because it requires a balance between our overall goal of reducing interference in the AM service and the understandable desire of broadcasters to improve their stations. The balance is delicate because as interference restrictions increase, flexibility decreases. Recognizing that the proposed rules would severely limit station modifications, the Commission notes that the modified approach relaxes the restrictions and is not as limiting. The Commission believes that this action may satisfy some of the commenters concerns. Moreover, the Commission is aware that often licensees are required to make changes to their stations because of circumstances beyond their control (e.g., loss of site and antenna maintenance difficulties).[2] Under those circumstances, the Commission would take a close look at the facts presented and rule on the appropriateness of a waiver, just as is available under the current standards. For these reasons, the Commission believes the rules adopted today provide an appropriate balance between two desirable but conflicting needs.

35. With respect to coverage, considerable opposition to the revised RSS approach focused on the resultant reduction of predicted nighttime service which would occur when calculating new interference-free contour values for coverage purposes. It is obvious that inclusion of additional co-channel and adjacent channel contributions would increase calculated RSS value. At the same time the Commission recognizes that a reduction in coverage, even if theoretical rather than actual, translates into an apparently reduced market and possibly reduced revenue for AM licensees. While the Commission believes it would be proper to adopt this more accurate calculation technique, it recognizes the merit in not including all signals in the RSS calculations since no convincing evidence has been presented to warrant a substantial alteration of the currently practiced method of coverage prediction.

36. Including first adjacent channel signals in the RSS calculations and incorporating the new skywave propagation model, will change virtually all nighttime interference-free contour values. Consequently, corresponding coverage maps will also change. As the Commission is maintaining a 50% exclusion for the RSS calculation, the coverage depictions for many stations should not be altered dramatically from those which existed under the previous standards. Therefore, the Commission shall not impose any requirement for a universal re-mapping of service contours. This will be left to the discretion of the individual licensee, or until such time as an application is filed for change in facilities which would itself alter the station's service area.

37. The only exception to use of the RSS with 50% exclusion for coverage purposes is the determination of an improvement factor for a station seeking to migrate to the expanded band. Because there is a need to distinguish between all stations with respect to interference caused and received, an impossibility using a 50% exclusion method, and because the practical problems associated with a reduced coverage depiction will be neither significant nor relevant to the improvement factor process, the 0% exclusion method will be utilized within the context of the expanded band migration eligibility calculations.

38. Finally, the Commission agrees that noise is certainly a factor which warrants consideration; however, based on the record of this proceeding, the Commission is not persuaded that interfering signals from other stations are less significant than ambient noise in the evaluation of the overall problem. Therefore, any solution which concentrates primarily on overcoming local noise thresholds, such as universal power increases, can only serve to exacerbate the existing problem by also raising the base interference level.

39. The Commission notes that, because Class IV stations are unique with respect to nighttime protection in that extremely large numbers share the same channel and have no specific nighttime restrictions, there would be little benefit in applying to Class IV stations the same rule changes that are being considered for other classes of stations. Thus, the rules the Commission adopts regarding nighttime interference will not apply to Class IV stations except with respect to the determination of coverage.

40. Next the Report discusses nighttime enhancement. Recognizing that daytime-only stations face serious disadvantages because of their inability to operate at night, the Commission has initiated several rulemaking proceedings that addressed this limitation on station operation and sought ways to permit fulltime operation to the maximum extent possible, consistent with sound engineering practice. Significantly, actions taken in a series of proceedings have allowed many daytime-only stations to operate during nighttime hours. In one of these proceedings, MM Docket No. 88–509 (See Notice of Proposed Rule Making, 53 FR 45525, November 10, 1988, and Memorandum Opinion and Order, 5 FCC Rcd 5192] the Commission proposed further steps to enhance the opportunity for daytime-only stations to improve their nighttime operations while at the same time maintaining existing interference protection requirements. The Notice observed the close relationship between the MM Docket No. 88–509 issues and those considered in this proceeding and concluded that the issues and record should be incorporated in this proceeding.

41. In essence, therefore, the Notice, in accordance with MM Docket No. 88–509, proposed the relaxation of current restrictions that prohibit Class II–S and Class III–S stations from establishing separate nighttime antenna systems and upgrading their nighttime operations to facilities that do not meet the minimum protected power level of 250 watts (or the equivalent 141 mV/m at 1 km). Also proposed were changes to requirements regarding minimum power, city coverage or minimum operating schedule. Proposed also in MM Docket No. 88–509 was the option of defining all such nighttime enhancement proposals as "minor changes"—even those requesting power increases.

42. Finally, the Commission proposed that unlimited-time Class II and Class III stations be allowed to reduce their nighttime power to a level below the established minimum and thus be

[2] The Commission also recognizes that certain circumstances that may be beyond the control of the licensee would prevent a 10% reduction because of a conflict with other Commission rules, such as those requiring compliance with minimum efficiency criteria or where specification of the standard pattern "Q" factors would not achieve proper tolerance. See 47 CFR 73.150. In such situations the Commission would allow, on a case-by-case basis, for some flexibility for exceptional cases where reduction could not be performed without the waiver of other technical requirements.

reclassified as Class II–S or Class III–S stations. Under these circumstances, the Commission reasoned that such stations would lose their rights to interference protection and that city coverage and minimum operating schedule requirements would be retained for stations which elect to make these voluntary power reductions. Comment, however, was sought on exempting such stations from the coverage requirements.

43. After a thorough review of this matter, the Commission adopts changes in the current rules to facilitate both the technical enhancement of nighttime operations by Class II–S and Class III–S stations and the overall improvement of service to the listening public. The Commission will also permit those unlimited-time Class II and Class III stations that find it advantageous to do so, to reclassify their nighttime operations as Class II–S and Class III–S and to operate under the same terms as existing Class II–S and III–S stations. The Commission believes that these changes will aid in the overall effort to permit daytime-only stations the opportunity to provide meaningful nighttime service and to provide added flexibility to fulltime stations who are suffering economic difficulties.

44. With regard to enhanced nighttime operations for Class II–S and III–S stations, the Commission will now permit such stations to increase their nighttime power from the level originally authorized to any intermediate level below 250 watts (or the 141 mV/m at 1 km radiation equivalent). Such stations will also be permitted, when they are operating below the 250-watt level (141 mV/m at 1 km), to use operating parameters which differ from their daytime antenna values and to operate these new systems at either their existing daytime or at new nighttime sites.

45. Further, the Commission has decided that applications filed by stations seeking to implement enhancement proposals will be processed as minor changes under § 73.3571(a)(2) of the rules. Section 73.3571(a)(1) of the rules defines "major change" applications as those that propose an increase in power, or a change in frequency, hours of operation or station location. The only definition in that section that is relevant to these proposals is the one regarding an increase in power. This action does not alter the basic right of parties to file informal objections under the minor change processing procedures nor does it diminish Commission scrutiny since the engineering analysis applied to major and minor change applications is essentially the same.

46. The Commission will also permit unlimited-time Class II and Class III stations to reclassify their nighttime operations as Class II–S and Class III–S stations and to operate below 250 watts (141 mV/m at 1 km equivalent) under the same terms as existing Class II–S and Class III–S stations. Since AM applications for power reduction are currently treated as minor change applications, it would be logical to extend that treatment to these cases. Thus, such applications will be processed as minor changes under § 73.3571(a)(2) of the rules. These stations will receive no protection from interference, will be required to provide protection to unlimited-time stations, and will be exempt from meeting nighttime city coverage and minimum operating schedule requirements.

47. Additionally, the Commission will permit Class II–S or Class III–S stations to use rooftop or other unconventional antenna systems at night. Such stations may benefit from using inexpensive, short, and easily mounted antennas which are cost-effective and may promote expedited nighttime service. However, the Commission will not compromise the efficacy of its interference reduction efforts for this purpose and therefore, will require detailed engineering showings to accompany any application where such an antenna is proposed, as well as a subsequent proof-of-performance to demonstrate proper system operation.

48. The Report now reviews the issue of advanced antennas. The Notice observed that the National Association of Broadcasters (NAB) was conducting tests on new types of antenna systems that might improve the AM broadcast service. The Notice thus proposed to defer changes in the rules until testing and analysis of such systems had been completed. Initially, the Commission commends the NAB and others for their continuing efforts directed at the development of improved antenna systems for use in the AM band. The Commission encourages the continuation of these and other related antenna projects which show promise for the improvement of this service.

49. At issue is whether it is appropriate at this time to revise the Commission's Rules in order to accommodate standardized versions of either or both of the antenna systems described above for use in the AM service. As noted in the comments, results of the skywave suppression antenna have been inconsistent and the Report finds that no further Commission action is warranted at this time. Results of the low profile antenna are more encouraging. However, Commission action on the low profile antenna at this juncture would be premature as it would be based upon a limited record of actual field test data. Accordingly, the Commission encourages further testing of this antenna design and, to the extent possible, intends to give favorable consideration on a case-by-case basis to any requests which might help develop the record of actual field test data. Commission action on a standardized version of the low profile antenna will be deferred pending the development and analysis of such a record.

50. The Report reviews split frequency operations next. Split frequency operations utilize one assigned carrier frequency during daytime hours and a second carrier frequency during nighttime hours of operation. Such operations could be attractive to daytime-only stations which are unable, due to technical restrictions, to use their daytime frequency for nighttime operation, as well as to new fulltime stations which cannot find a viable single channel for both modes of operation. Because of the greater level of complexity of split frequency operations and the potential for increased preclusion of other conventional facilities, split frequency operations should generally be disfavored. However, the Commission finds that under very special and unique circumstances, the public service arguments for authorizing such an operation may outweigh the aforementioned liabilities. The Commission will consider waiver requests where sufficient supporting technical information is submitted to establish that no preclusion to other full time stations would occur, and that the greater public interest can be achieved through issuance of such an operating authority. Nevertheless, the Commission does not conclude that adequate justification exists to create a separate body of rules to govern such operation. Therefore, the Commission amends § 73.3516 of the rules to more clearly exclude split frequency operations.

51. In summary, in this section of the decision specifically dealing with technical standards, the Commission has: (1) Adopted new first and second adjacent channel protection standards, (2) revised nighttime coverage and interference calculations, (3) allowed possible enhancement of nighttime service by certain Class D stations and, most importantly, (4) adopted a rule that would reduce interference to some stations when certain facilities

modifications are authorized. As a group, these rules should lead to a significant, although gradual improvement in AM signal quality.

52. The next segment of the Commission's strategy for rejuvenating AM service is the selective migration of existing AM stations into the expanded band. This migration offers a unique opportunity for the improvement of AM broadcasting. By adopting appropriate rules for the use of the expanded band, migrating stations will operate in a new environment where Model I service should be achievable by all stations. Furthermore, after the completion of the migration process, there should be a general reduction in interference levels in the existing band, helping achieve the goal of Model II service for existing stations. These changes should benefit all licensees and the public as a whole as the quality and perception of the AM service improves. However, the extent of improvement depends, in part, upon the selectivity of the migration process. Migration of AM stations from the existing band should reduce interference and congestion in the existing band and should offer a prompt method for establishing service in the expanded band. We now consider the various issues that must be resolved in order to accomplish these goals.

53. In this section, the Commission addresses the many issues related to the migration process. They are: (1) Wide station separations and low interference levels; (2) migration eligibility; (3) existing stations causing interference and preferred migrators; (4) allotment or assignment options; (5) sample allotment plan; (6) the selection process for migrating stations; (7) ownership limitations and transition period; (8) expanded band technical standards; and (9) city coverage for expanded band stations.

54. First the Report looks at wide station separations and low interference levels. Migration of AM stations from the existing band into the expanded band is a fundamental feature of the Commission's plan for AM improvement. In the Notice, the Commission expressed its preference for an expanded band environment which would utilize relatively wide spacings between stations to produce reasonably low interference levels. The Notice also reflected the Commission's initial reservations regarding the use of elaborate multi-tower directional antenna systems in the expanded band, stating instead our preference for nondirectional or simple directional antenna systems. In this regard, the Notice discussed the appropriateness of the characteristics of the Model I facility for the expanded band. Consistent with this Model I definition, the Notice made a preliminary estimate that 25 to 30 stations per channel could be accommodated in the expanded band.

55. One of the Commission's goals in this proceeding is to create an expanded band environment with relatively wide station separations which would result in reasonably low interference levels. The Commission continues to believe that adherence to carefully crafted expanded band characteristics, such as the Model I parameters, is essential to accomplish this goal.

56. The parties that maintained that the Model I technical characteristics are not consistent with the Commission's service goals base their arguments on studies that assumed that our desired value for E_{nom} was to be used as the value for the nighttime interference-free contour and protected accordingly. Interference prevention in the expanded band will be based upon the station separations of the allotment plan rather than a requirement for case-by-case protection of a nighttime interference free contour as is used in the existing band. The Commission's initial calculations performed at the time of the Notice yielded predicted nighttime RSS values considerably higher than 2.0 mV/m. The initial estimate of 25 to 30 stations per expanded band channel was intended to represent the potential upper limit of the number of stations that could be accommodated per channel. Clearly, this estimate was made in an environment of considerable uncertainty with regard to many pertinent parameters. It was never the Commission's intention that the 25 to 30 station per channel estimate be viewed as a specific primary goal for the expanded band to which other considerations would be subordinate.

57. While the Commission will require expanded band operations to use at least Model I parameters, there may be special cases which warrant the authorization of other than Model I parameters. In such situations, the protection to be afforded co-channel and first adjacent channel allotments from skywave and groundwave interference in any part of an allotment area shall be equivalent to the protection afforded by Model I facilities implementing the designated allotment and will be determined on a case-by-case basis.

58. An example of a variation from the Commission's general concepts relates to the potential for allotments to be located in coastal areas. In such situations, it may be appropriate to space allotments at shorter distance intervals and to specify a simple directional antenna system (2 or 3 towers) in order to provide full protection to all stations. The Commission does not anticipate drastic short-spacing of facilities which would require deep directional pattern nulls, but rather moderate degrees of suppression to compensate for marginally short-spaced allotments. In situations such as these, where a major lobe of the pattern could be directed out to sea, with no potential for interference, consideration could be given, on a case-by-case basis, to the possibility of 10 kW nighttime power.

59. Regarding migration eligibility, the Commission decides to restrict initial eligibility for expanded band allotments to existing AM licensees. The Commission is convinced that such a restriction is essential to achieving the level of interference and congestion reduction in the existing band which might revitalize its competitive standing. Permitting new applicants, whose use of an expanded band channel would contribute nothing to reducing interference or congestion, is simply inconsistent with these requirements. (Consistent with *Ashbacker Radio Corporation* v. *FCC*, 326 U.S. 327, 333, n.9 ((1945)) and *United States* v. *Storer Broadcasting Co.*, 351 U.S. 192 ((1956)), the Commission is permitted to restrict initial migration eligibility to existing AM stations.) The Commission also elects not to include Class IV stations as eligible migrators.

60. The Commission further decides against minority, female or educational service set-asides in the expanded band. In sum, given the level of interference and congestion in the existing band and the significant constraints imposed by quality considerations on the expanded band's capacity, the Commission does not believe set-asides or reservations for applicants which will not contribute to the improvement of existing band conditions are feasible at this time.

61. The Commission does recognize, of course, that increasing the levels of minority and female ownership promotes diversity and therefore advances the public interest. The Commission also recognizes that in some areas there may be a desire for additional public radio outlets and that existing spectrum in the FM band may not be sufficient to fulfill that desire. The difficult choices made here do not suggest any diminished concern on the Commission's part for the benefits which the existing minority and female preference policies and educational reservations have long provided. Rather, they reflect the hard reality that overall

AM improvement will require all available resources. The Commission notes, of course, that to the extent initial migration to the expanded band does not exhaust its capacity, new applicants, including noncommercial educational parties, and minority and female applicants whose comparative preferences would be fully effective, will have an opportunity to seek authorizations.

62. The Report reaches several conclusions regarding the third migration issue of existing stations causing interference and preferred migrators. First, after careful consideration, the Commission finds that revising the priority scheme through an emphasis on stations receiving interference, as opposed to stations causing interference, would be counterproductive because this would stray from the objective in this proceeding—the reduction of congestion and interference in the AM band.

63. The Commission believes that granting a preference to a station migrating to the expanded band if the station currently provides a community its only local service is not warranted. A first local service preference is, in some contexts, a sensible corollary of the Commission's obligations under section 307(b) of the Communications Act to provide a fair, equitable, and efficient distribution of radio services. In the present situation, however, the local station is already in operation. Therefore, the Commission's refusal to grant such a preference does not foreclose the availability of local service in the affected community, nor would grant of the preference in any way improve the distribution of stations.

64. In regard to making a specific allocation to TIS on 1690 and 1700 khz, this step would impair the expanded band's ability to accommodate preferred migrators. Minimizing interference to primary stations and providing maximum site selection flexibility for TIS are best achieved by opening the entire AM band to TIS.

65. The Commission continues to believe that fulltime stations that would reduce interference and congestion by moving to the expanded band represent the most beneficial migrators and that comparing improvement factors is an appropriate basis for selecting between petitioners that desire to migrate. In this fashion, the petitioner that brings the greatest relief from interference and congestion will be selected.

66. The Commission also finds the comments supporting a daytime improvement factor sufficiently persuasive to allow for altering the initial approach, as proposed in the Notice, to some extent. The Commission is adopting a revised improvement factor scheme which incorporates a preference factor for daytime interference in addition to the proposed factor for nighttime interference. In recognition of the importance of reducing daytime interference, the Commission is adopting the same approach for calculating the daytime improvement factor that was proposed in the Notice for the nighttime, that is, the ratio of the area of daytime interference caused (co-channel and adjacent channel) to the area of daytime service provided. This method is a logical extension of the nighttime interference factor.

67. However, where nighttime interference and service is determined using the Root-Sum-Square (RSS) method, the calculation of daytime groundwave interference and service is based on the amount of contour overlap adjusted for contour protection ratios. That is, if the normally protected contour of one station is overlapped by the interfering signal of another station on the same or first adjacent channel, the amount of interference caused is equal to that portion of the overlapping area in which the ratio of the desired signal to the undesired (interfering) signal is less than the co-channel or first adjacent channel protection ratio, as appropriate. The daytime service area of a station is equal to the area within its normally protected contour less any area lost to interference as determined above. The Commission will not consider the effects of stations operating on second and third adjacent channels, both because the rules regulating second and third adjacent channel spacings permit such stations to operate close to each other (well inside the normally protected contours) and because such rules are intended to control receiver cross-modulation and inter-modulation problems and do not lend themselves to determinations of areas of interference.

68. In calculating the daytime contours, theoretical conductivity values will be used for the purpose of determining the daytime improvement factor. Although it would be possible to use measured conductivity data in connection with the contour calculations for the improvement factor, the Commission concludes that the benefits of this approach would be very minimal. In order to use such data fairly, a complete search of all available measurement data for all stations would be necessary. Even with all measured conductivity values considered, the Commission believes that, with few exceptions, the effect of the measurement data would even out and there would be little overall impact on the ultimate ranking of prospective migrators.

69. The improvement factors for daytime and nighttime are defined as the ratio of daytime and nighttime interference caused to the amount of daytime and nighttime service that the station provides. Each improvement factor will be calculated independently and then, both improvement factors for the daytime and nighttime will be added together, thus giving equal weight to each factor. Given that interference tends to be greater at night and interference-free service areas are greater in the daytime, the improvement factors will still tend to favor reductions in nighttime interference.

70. To summarize, if no fulltime station requests an allotment in a given area, the next priority will go to daytime-only stations. Daytime-only stations located within the 0.5 mV/m–50% skywave contours of Class I stations and which are licensed to serve communities of 100,000 or more, that currently lack a local fulltime aural service, will be considered as having first priority among daytime-only facilities. This will give the Commission the opportunity to make a fulltime allotment to several medium-sized cities in or adjacent to major metropolitan markets that now lack a local fulltime aural station and have no reasonable prospects for obtaining one. The next priority will go to other daytime-only stations, consistent with the improvement factor calculation methodology described above that ranks stations according to which ones cause the most daytime interference in relation to the service provided. As discussed in more detail in the AM Stereo section, stations within each priority group that propose to broadcast in AM stereo will be awarded a preference.

71. The fourth area of consideration in the migration segment of this Report is allotment or assignment options. These are the planning methods under consideration for the development of the expanded band. Assignment planning would enable the Commission to maximize the number of stations on each channel. Such a method would require each applicant to choose a specific site and custom-design the station's technical parameters such as frequency, power and antenna systems to protect other assignments. By contrast, allotment planning requires the Commission to perform the initial planning by specifying for each allotment an area within which a station on a given channel may be established

with generally fixed technical parameters.

72. The Commission finds that the development of a flexible allotment plan for the expanded band is the best means of initiating service in the new band consistent with our overall AM improvement goals. Such a plan should allow small variations in inter-allotment spacings to: (a) Permit sufficient flexibility to derive an allotment plan that would satisfy the needs and interests of licensees that desire to migrate and (b) ensure that the expanded band would be as interference-free as possible. Also, the Commission believes that a site tolerance on the order of 20 km would be desirable to define the allotment area. This approach will enable the Commission to establish Model I service in this new spectrum, while ensuring that the site location requirements of preferred migrators can be accommodated.

73. Next, the Report looks at the sample allotment plan in considering the migration portion of this decision. The purpose of the sample allotment plan is to illustrate the methods that will be used to create the final plan. The sample allotment plan the Commission has developed is based upon the voluntary letters of intent filed in response to the Notice. The resultant sample allotment plan is included in appendix D of the full Report. It should be noted that there are still some uncertainties to be resolved regarding use of the expanded band in international border areas. Work continues on bilateral negotiations to finalize agreements on this matter. However, parties are advised that the sample allotment plan is subject to possible revisions, particularly in border areas. Since the sample allotment plan is primarily for illustrative purposes, these potential discrepancies are of little consequence.

74. The Report next considers the selection process for migrating stations. The Notice proposed to announce a filing window, within which petitions for authority to move to the expanded band could be filed. Unlike the present application process, no showing would be required for the proposed new operation; technical information would address only the petitioner's currently licensed station. All candidates would be required to operate Model I facilities (stereo optional) unless restricted by international agreements or special circumstances that warrant variations. Should the Commission rule favorably on the petition, it would specify the frequency to be used and any additional pertinent technical details. To receive an assignment, successful petitioners would then be required to file a complete application on FCC Form 301.

75. The Commission remains convinced that the general approach outlined in the Notice is both a viable and an efficient approach to administering the selection process. The following summarizes the steps involved in developing the allotment plan:

(a) The Commission will issue a Public Notice announcing a filing window during which AM stations may file a petition for establishment of an allotment in the expanded band. No filing fee will be required for such petitions. After the filing window closes, the Commission will issue a Public Notice (for information purposes) that lists all stations that filed petitions.

(b) The Commission will extract relevant data from the petitions and enter the information into the database.

(c) The Commission will rank all petitions in accordance with the priority groups and improvement factors described in the Report and Order. The priority groups are: (1) Fulltime stations ranked according to sum of daytime and nighttime improvement ratios of: The composite area of interference caused, to the areas of service provided; (2) daytime stations located within the 0.5mV/m–50% skywave contours of Class I stations which are licensed to serve communities of 100,000 or more, that currently lack a fulltime aural service; (3) daytime-only stations ranked according to the ratio of: The composite area of daytime interference caused, to the area of daytime service provided.

(d) Based upon the overall ranking of the petitions performed in step (c), the Commission will produce the Allotment Plan.

(e) The Commission will then issue a Public Notice identifying the stations that are eligible to apply for authorizations associated with specific allotments. Stations not selected for migration will be given thirty (30) days to file for reconsideration of the Commission's action with arguments limited to addressing errors in the selection process.

(f) After the allotment plan has become final and no longer subject to Commission reconsideration, the Commission will enter the allotment into the Commission's AM Engineering Data Base. This entry will include: Location, frequency, whether or not AM stereo is to be used, and other generic technical information with regard to the particular allotment.

(g) Stations selected for migration will be afforded sixty (60) days from the date of allotment notice becoming final in which to file an application for a CP on the allotted channel. The application should be filed on Form 301 and must be accompanied by the normal filing fee for such application.

(h) After acceptance of the application for filing, the Commission will then put the application on a cut-off list. The application will then be subject to petitions to deny but not to competing applications.

(i) After grant of the CP application and construction of the authorized facilities, the permittee will then file a covering license application on FCC Form 302. Licenses for stations in the 1605–1705 kHz band will be issued for a term that is concurrent with the existing license for the operation in the 535–1605 kHz band.

(j) One year after the initial allotment plan has become final (see (f) above), those allotments provided for in the initial allotment plan that have not been authorized (or for which timely applications are not pending) will be deleted from the Commission's data base and the Commission will open a second filing window to allow for petitions by existing stations to migrate to the expanded band.

(k) Upon completion of the second filing window for petitions to migrate and the subsequent authorization procedures, the Commission will continue to monitor the migration process to assess the potential for adding additional stations to the band. As part of that assessment, the Commission will determine whether additional allotment windows will be utilized or whether to implement a traditional assignment scheme to best maximize the remaining available spectrum.

76. The Report now examines ownership limitations and a transition period. The favorable comments that the Commission has received in response to the proposals set forth in the Notice reinforces the Commission's initial conclusion that temporary dual ownership and operational flexibility are essential to a successful transition to the expanded band. The Commission therefore finds it appropriate to adopt new ownership rules.

77. The Report adopts the proposal to add a note to the multiple ownership rules creating an exception to the duopoly rule that would permit the simultaneous ownership and operation of an expanded band and an existing band station with overlapping 5 mV/m contours for a fixed transition period initially set at 5 years. After the expiration of the transition period, the license for the existing band station will

be surrendered. Considering the emphasis placed by commenters on flexibility regarding this issue, the Commission will monitor progress in the use of the expanded band during this period and grant an appropriate extension if factors affecting the overall development of the band warrant such action. These factors would include, among others, the economic viability of stand-alone expanded stations and the penetration of full-band receivers in the marketplace.

78. An exception will also be made to our national ownership rules allowing the numerical limit to be exceeded during this transitional phase. The Commission emphasizes, however, that following construction of the expanded band station, the license that would be issued if all terms of construction were to be met would be conditioned on the eventual surrender of the existing band license. As outlined in the Notice, during the interim the licensee would be prohibited from operating on one of its authorized frequencies and selling its operation on the other frequency. If a station is authorized to move to the expanded band, and the licensee later decides to operate on only its former frequency, the Commission will require it to surrender its expanded band authorization and its allotment would be deleted. After an expanded band station is licensed to operate and the transition period has expired, the existing band operation will go silent. Any application seeking the frequency of the former existing band operation will not "inherit" the previous station's radiation rights, but will instead have to meet the standards in effect at the time of the filing.

79. The Commission will also permit simulcasting on both bands during the transition period. Not allowing for such duplication privileges would only act as a disincentive to broadcasters considering to move to the new band. It is vital to employ all means available to encourage broadcasters and listeners to utilize the new band. Considering the economic ramifications of such a move, we believe that same-service simulcasting for a transition period will only help in our efforts to encourage development of the new service.

80. Finally, the Commission acknowledges the separately pending Notice of Proposed Rule Making in MM Docket No. 91–140 (56 FR 26365, June 7, 1991) regarding the possible revision of the radio multiple ownership rules. The notes that are being added to the current multiple ownership rules in order to accommodate the new AM expanded band will be adjusted, if necessary, to reflect any comprehensive changes that may be made to the rules in that proceeding.

81. In this section, the Commission has adopted an appropriate set of rules for the expanded band which is intended to reduce interference in the existing band, while facilitating the prompt initiation of service in the new broadcasting spectrum. In this way the Commission intends to maximize the benefits to the AM service as a whole, due to the migration process. Of course, no improvement can be realized through these actions alone without the recognition by preferred migrators that such a move would be in their own best interests. The regulations adopted in this Report are intended to achieve that effect. The Commission stands committed to its objective of creating a model AM service in the expanded band that will ensure that the full potential of AM broadcasting can be realized.

82. The Commission now considers expanded band technical standards. The Notice proposed that the technical standards applying to the existing AM band apply generally to operations in the expanded band. These standards include minimum antenna efficiency and ground system requirements, antenna radiation characteristics, and blanketing restrictions.

83. The Commission remains convinced that these initial proposals will best serve the defined goals and the Report therefore adopts them *in toto*. By this action, the Commission establishes for use in the new spectrum, fundamental technical operating criteria that have been applied to AM broadcasting for many years. Use of such criteria links the existing and expanded bands by applying uniform and basic station operational characteristics and provides a known basis for developing the expanded band so as to achieve a significant degree of improvement of the AM service.

84. Lastly under the topic of migration, the Report analyzes city coverage for expanded band stations. The Notice proposed that stations in the expanded band be required to provide nighttime coverage of at least 50% of the principal community by the 5 mV/m or the interference-free contour, whichever value is greater. Nighttime coverage would be calculated using the RSS method without exclusion. Comment was also sought on the option of allowing the 50% coverage minimum on a temporary basis and ultimately returning to the 100/80% coverage standard presently in effect for the existing band.

85. Because the Commission believes that AM improvement will be accomplished only if facility changes which move the AM service in the direction of the adopted models are granted, resolution of this issue essentially requires the Commission, when determining whether to grant an application for migration to the expanded band, to balance the qualitative improvement of the AM service against the current minimum extent of service. Since signals propagate somewhat less efficiently at expanded band frequencies than in the existing band and close-in sites suitable for AM antennas are increasingly difficult (and expensive) to find, the Notice raised the possibility of relaxing coverage requirements to facilitate the relocation of preferred migrators.

86. Regarding those commenters urging that more than 50% coverage of the city be required, the Commission notes that this position does not address the desirability of facilitating preferred migrators, which was the basis for the coverage relaxation proposed. Furthermore, the limitations imposed on expanded band facilities (power limits, poorer propagation at higher frequencies) may make it difficult for migrating stations to serve their communities from existing sites. The Commission does not believe a 50% coverage requirement results in substandard stations. While less rigorous than the present standard, the 50% requirement nonetheless ensures a signal of significant quality to the community of license and the added flexibility of a 50% coverage rule allows the maximum latitude consistent with the goals of community service for stations to locate expanded band facilities at cost effective locations

87. The final segment of the Commission's strategy for rejuvenating the AM industry is consolidation. In order to achieve the goal of interference reduction in the existing AM band, the Notice sought comment on proposed changes to the Commission's non-technical policies and rules intended to motivate broadcasters to reduce interference in the band. Specifically, the proposed changes included: (1) Granting tax certificates to AM licensees who receive monetary compensation from another licensee to surrender a broadcast license or to modify an existing facility if those acts resulted in interference reduction; (2) relaxing the Commission's multiple ownership rules to permit a licensee significantly reducing interference to co-channel or adjacent channel stations to own AM stations whose 5 mV/m

contours overlap; and (3) possibly reimposing an AM–FM program nonduplication rule.

88. Regarding voluntary agreements, section 1071 of the Internal Revenue Code, 26 U.S.C. 1071, permits the Commission to issue a tax certificate to the seller of a regulated property when the sale will give effect to a new or changed Commission policy regarding the ownership or control of broadcast stations. A tax certificate enables the seller of the broadcast property to defer any capital gain it realizes by acquiring qualified replacement property within two years of the sale or by reducing the basis of other depreciable property. See 26 U.S.C. 1033.

89. These tax certificates involve both the Commission and the Internal Revenue Service ("IRS"). The Commission's responsibility in this regard is to determine whether the "sale or exchange of property" effectuates a new Commission policy. As a result of this proceeding, the Commission adopts a new policy to discourage ownership interests in AM stations causing interference and to encourage existing licensees to enter into voluntary agreements to reduce such interference. It is the Commission's view that improvement in the technical quality of the AM service will promote the public interest objective of an overall competitive radio broadcasting service. *Cf. Telecator Network of America*, 58 RR 2d 1443 (1985). To that end, the Commission will issue tax certificates to AM licensees receiving financial compensation for surrendering their licenses for cancellation. The tax certificates will be issued upon the surrendering of the AM license for cancellation.

90. These tax certificates will only be issued in response to agreements filed within three (3) years of the effective date of this Report. The Commission considers such transactions "necessary and appropriate to effectuate" its new policy of encouraging the reduction of interference in the AM band. The Commission notes, however, that the IRS makes the ultimate determination whether the statutory requirement of a "sale or exchange of property" has been met. The Commission further notes that a transaction involving the sale of a station and surrender of its license has traditionally been construed to involve a "sale or exchange of property" within the meaning of section 1071. See Policy Statement on Issuance of Tax Certificates, 92 FCC 2d 170 (1982). The Commission thinks a reasonable argument can be made than an agreement to surrender a license in exchange for payment can be viewed as a sale or exchange within the meaning of section 1071. The tax certificates will be granted by the Commission in the circumstances described above, subject to IRS approval regarding the "sale or exchange of property" determination.

91. The Notice also proposed issuing tax certificates to those licensees that modify their facilities to reduce interference. While the Commission continues to encourage such voluntary agreements, it believes the issuance of tax certificates in such situations to be legally problematic as regards the statutory requirement of a "sale or exchange." The Commission will, therefore, limit the issuance of tax certificates to situations involving a surrender of a license.

92. The Report next discusses the common ownership aspect of consolidation. In order to facilitate reduction of interference in the existing AM band, the Notice proposed to waive § 73.3555(a)(1) of the Commission's rules—the AM duopoly or contour overlap rule—on a case-by-case basis, to permit common ownership of two commercial AM stations with overlapping 5 mV/m contours if an applicant showed that a significant reduction in interference to adjacent or co-channel stations would accompany that common ownership. Simultaneous broadcasting of the same program on both stations would be permitted if the stations served substantially different markets or communities. In order to ensure that the promised interference reduction would result from the joint ownership, the Notice proposed to require applicants to submit, along with their waiver requests, contingent applications for the major or minor facilities change needed to achieve the necessary interference reduction.

93. After careful review of the comments, the Commission adopts the proposal made in the Notice limiting grant or waiver requests to those situations that result in interference reduction to co-channel or adjacent channel stations. In making our waiver decisions, however, the Commission will remain mindful of viewpoint diversity and market concentration and will consider these factors in conjunction with what will be accomplished by an interference reduction proposal. The Commission will require to be filed, along with waiver requests, contingent applications for major or minor facilities changes demonstrating the nature of the interference reduction to be accomplished. In view of the potentially wide range of factual circumstances in which beneficial interference reduction may occur, the Commission declines to adopt a benchmark which a proposal must meet to be considered as one resulting in "significant" interference reduction. However, the Commission will be guided by factors such as those enunciated in our migration selection processes in determining whether a reduction is "significant." Simulcasting on these commonly owned stations will be permitted if the stations serve substantially different markets or communities.

94. Because the radio multiple ownership rules may be modified pursuant to pending decisions developing from the above-cited Notice of Proposed Rule Making in MM Docket No. 91–140, the Commission acknowledges that a future rule revision may allow for commonly owned AM stations without any demonstration of interference reduction. At this juncture, however, the Commission's goal is to improve the overall state of the AM service and to offer incentives to aid in attaining this goal within the parameters of this rule making. Any adjustment or expansion to the limited multiple ownership rule changes in this proceeding will be coordinated with any overall future changes that may be implemented with regard to these rules.

95. The last area of concern in the consolidation portion of the Report pertains to the Commission's AM–FM programming nonduplication rule. The Notice sought comments on issues relating to whether the Commission should impose limits on AM–FM duplication. The Commission generally believes that encouraging separate programming by AM–FM combinations would effectively serve both the goals of promoting diversity and that of reducing interference and congestion in the AM service. However, because of the likelihood of substantially changed circumstances in the AM band, the Commission finds that such limits would currently be premature. Thus the Report does not adopt such restrictions. The Commission will revisit this issue at the end of three years to determine whether, informed by a more certain knowledge of the direction of the AM service, program duplication limitations are advisable.

96. In summary, the changes in the non-technical areas of the Commission's rules and policies adopted in this report will serve to enhance the existing AM service through the achievement of overall interference reduction in the band. Likewise, the Commission's decision to revisit the issue of imposing a program nonduplication requirement in three years will enable the

Commission to assess the impact of today's decisions on the AM service and better evaluate the need for program duplication limits. Moreover, adoption of changes such as the encouragement of voluntary arrangements to reduce interference through the issuance of tax certificates and the relaxation of the multiple ownership rules for those who can demonstrate significant reduction of interference to other AM stations, will help reshape the service and foster long-term benefits so that it can reach its maximum potential.

97. The Notice next proposed that both Model I and Model II stations utilize stereo modulation and sought comment as to what decisions regarding stereo would be useful in this proceeding. Those commenters who opposed a mandatory AM stereo requirement have convinced the Commission that the provision of AM stereo in the existing band should remain a voluntary decision. Arguments of economic hardship are very persuasive for stations remaining in the existing band, since many of these stations are already in precarious financial situations and cannot afford the cost of converting their facilities to stereo operation.

98. However, in the case of AM stations that are migrating to the expanded band, the Commission believes that there is a compelling reason to provide an incentive for the use of AM stereo. The Commission considers AM stereo a valuable asset. Failure to encourage use of AM stereo would send a signal to receiver manufacturers and the public that the Commission is less than completely committed to the provision of a fully competitive service in the expanded band. Additionally, AM stereo operations in the expanded band would provide receiver manufacturers with an added incentive to produce receivers capable of stereo reception for the entire AM band. Accordingly, while the Commission encourages stereo operation in the existing band, it will provide a specific preference for stereo proponents in the expanded band. The incremental expense associated with the provision of AM stereo in a new facility is typically less than the cost of converting an old facility, and represents only a small percentage of the total cost of building a new AM station.

99. To encourage migrating stations to acquire the advanced technology associated with AM stereo at the start, migration preferences will be offered for those existing band stations which, when filing petitions for expanded band allotments, express their commitment to use of AM stereo for their proposed expanded band operation. Under this approach the Commission will favor a migrator who proposes stereo over one who does not, where the difference in their improvement factors is not sufficient to outweigh the benefits of stereo operation.

100. The stereo preference will be applied in this manner. As explained above, petitions for allotments of expanded band channels submitted by existing stations will be arranged in each priority group in order of the improvement factor calculated for each petitioner. Allotments will be made one-by-one beginning with the highest improvement factor. During this process, the Commission may find that an allotment under consideration (candidate allotment) is mutually exclusive with one or more previously selected allotments (established allotments) and cannot be accommodated in the expanded band. The Commission will substitute the candidate allotment for a previously established allotment provided all of the following conditions are met:

(1) The petitioner for the candidate allotment has made a written commitment to the use of AM stereo and the petitioner for the established allotment has not;

(2) The difference between the improvement factors associated with the candidate and established allotments does not exceed 10% of the improvement factor of the candidate allotment;

(3) The substitution will not require the displacement of more than one established allotment; and

(4) Both the candidate allotment and the established allotment are within the same priority group (*e.g.*, fulltime stations).

101. The Report next decides not to provide any specific allocation of an expanded band frequency for Travelers Information Stations (TIS) on a primary basis. However, the support for TIS operation on a secondary basis throughout the AM band (535–1705 kHz) appears substantial. The great number of frequencies on which TIS assignment would be possible would more than offset the loss, in a few areas, of the frequency 1610 kHz.[3]

102. Multiple channel assignment flexibility for TIS offers possibilities of locating TIS where it can function optimally, with the option of selecting a frequency with a recognized absence of interference from broadcast stations, or even to provide multiple channel coverage for a given area. Therefore, the Commission amends § 90.242 of its rules to permit the authorization of TIS, on a secondary basis, on an assignable frequency in the AM band. Since TIS operation is secondary to AM broadcast station operation, TIS applicants must protect broadcast assignments in the 535–1605 kHz band and allotments in the 1605–1705 kHz band. Additionally, changes will be made to part 2, Table of Frequency Allocations, § 2.106 of the rules.

103. The Commission also concludes that no change should be made in the current showings required of TIS applicants. While sympathetic to the requests of TIS interests to augment TIS service to some extent, the Commission finds that the current record lacks the technical specifics necessary for such an action. In addition, the Notice did not contemplate any changes and consideration of such changes is beyond the scope of this proceeding. The next several years should be a period in which significant changes are made in many AM stations' facilities. The Commission does not believe that such a dynamic operating environment is one which is conducive to the development of enhanced technical standards for TIS The resolution of any unique difficulties associated with the installation of a particular TIS can be handled on a waiver basis. The Report determines that the recommendation that TIS operation be permitted in the FM band is also outside the scope of this proceeding.

104. Finally, the Commission turns to the issue of whether receiver manufacturers should be encouraged to modify their designs for AM radios, and, if so, what form that encouragement should take. The Notice proposed to establish criteria for a "single hypothetical model" AM receiver possessing "desirable and yet affordable performance attributes" to be used as a "reference" model to induce manufacturers to "make significant improvements in the performance of AM tuners." The NRSC draft recommendations were proposed as the basis for this model.

105. After a review of the evidence established in this proceeding, the Commission elects to proceed with the proposal as outlined in the Notice to use the recommendations of the NRSC in the spectrum planning assumptions. As stated in the Notice, the Commission intends to treat them as recommendations to the receiver industry, not requirements. In a related

[3] See § 90.242 of the rules in connection with the allotment plan to be developed in order to determine the continued usability of 1610 kHz in any given area.

action, the Commission encouraged AM stations to implement NRSC–1 audio pre-emphasis in addition to requiring them to comply with NRSC–2, which sets the standard for the transmitted AM signal envelope. A logical follow-up to that effort would appear to be the adoption by the receiver manufacturers of the NRSC–3 receiver specifications, which match receiver bandwidth characteristics to those set for transmitters. The Commission will at appropriate intervals publish a list of those receivers that meet the NRSC–3 standard or which are comparable so that consumers can make an informed choice when purchasing AM radios.

106. Although advocated by a number of commenters, the Commission is not including in the receiver model any specifications with respect to stereophonic reception. The two most frequently suggested specifications were that: (1) Any receiver capable of FM stereophonic reception should also be capable of AM stereophonic reception, and (2) all AM stereophonic receivers should be capable of receiving and decoding both the Motorola and the Kahn stereophonic transmission systems. A consumer who chooses to listen to musical programming on FM and news programming on AM should not be forced to purchase a stereophonic AM receiver. Therefore, the Report does not mandate that AM–FM receivers capable of receiving FM stereo signals must also be capable of receiving AM stereo signals. Nevertheless, receiver manufacturers are encouraged to include AM stereo reception capability with NRSC–3 performance characteristics in their receivers.

107. The Notice included proposed rules related to the specific issues addressed in this proceeding as well as a general revision of the existing AM rules. Most comments echoed the Commission's position that the proposed revisions were indeed valuable and necessary from the standpoint of administrative accuracy.

108. A specific rule change proposed in the Notice addressed the lack of specific direction contained within § 73.152 regarding the filing of directional antenna pattern augmentation applications. The proposed language would clearly enunciate the instructions that had been longstanding Commission staff policy. The rule would not include procedures which would promote efficient use of AM spectrum and, with the aid of these instructions, eliminate numerous amendments to applications which are routinely found to be not in compliance with policy. Additionally, the Commission concludes, based on the majority of the comments, that directional pattern augmentation should be available to stations in the expanded band for those operations in need of this procedure where the maximum allowable radiation is not exceeded. Stations would need to consider using this process within the context of maintaining a radiation equivalence toward other allotments or areas of protection where the value of the radiated fields do not approach the maximum allowable limits.

109. On March 29, 1990, we released an Order that curtailed the filing of most applications for new or changed AM facilities. The Commission believes this restriction upon the filing of applications of new and changed AM facilities is no longer necessary and it will be removed as a seventy (70) days from the date of the adoption of this Report.

110. In the Notice the Commission stated its desire to minimize the use of directional antennas in the expanded band. In the relatively few instances that simple directional antennas would be utilized, the Notice proposed significantly less burdensome requirements for measurement data for demonstrating pattern radiation compliance by removing the measurements required by § 73.151 (a)(1)(ii) and (a)(1)(iii). The Report concludes that for simple directional antennas systems in the expanded band (those utilizing two towers), the Commission will require measured radials only in the directions for which the proposed allotment is short-spaced with another co-channel or adjacent channel allotment. This action will ensure that equivalent protection is provided to all expanded band facilities. The Commission further finds that in the isolated instances where a directional antenna system of more than two towers is used in the expanded band, full proof-of-performance requirements will apply.

111. Finally, a number of changes are made to part 2, Table of Frequency Allocations, § 2.106 of the rules, in addition to those described in the section on the Traveler's Information Service, to implement the AM band expansion and to modify the conditions for non-broadcast use of the band 1605–1705 kHz. These changes were proposed in the Notice and no comments were received on these subjects. In general, they reflect the Commission's decision to use that band for broadcast operation while continuing to permit operation of existing non-broadcast station, provided interference is not caused to broadcast stations.

112. In summary, in this Report and Order the Commission has taken a number of major steps to improve technical standards and thus to reduce the level interference in the existing band, to encourage certain existing licensees to move into the expanded portion of the AM band, and to consolidate existing broadcasting facilities in order to further reduce congestion and interference in the existing band. The Commission has taken these steps in order to slow or reverse the trends in this band towards rising congestion and interference and declining listening audiences. While aware that the actions of broadcasters and listeners will ultimately determine the future direction of AM radio, the Commission believes that the changes made in this Report will allow broadcasters to make changes that may greatly enhance their competitive position relative to other audio outlets.

Administrative Matters

113. Because the Commission is now issuing this Report and Order and closing this docket, it will also lift the freeze on AM applications on the effective date of this Report and Order. The Commission will begin accepting applications for modifications of existing AM stations and applications for new AM stations in the existing AM band. Such applications will be required to comply with the new technical standards that are adopted today. Applications currently on file that have been "cut-off" will not be required to amend. All others will be given sixty (60) days from the effective date of this Report and Order to file amendments to satisfy the requirements of the revised rules.

114. In Appendix D of the full Report, the Commission describes an example allotment plan for the expanded band that conforms to our new technical requirements. At a date to be specified in the future, the Commission will announce a filing window during which existing licensees will be allowed to file petitions to operate a station in the expanded band. Such petitioners will be required to comply with all relevant technical rules.

115. The Report and Order in MM Docket No. 89–46 adopted significant revisions to the rules and policies concerning interference reduction agreements, elimination of the "grandfathering" of deleted AM facilities, contingent applications, local service floor, and competing applications. The Report and Order in MM Docket No. 88–508 adopted changes to the Rules for calculating skywave

field strength utilizing a new, more accurate skywave propagation model that better depicts nighttime skywave service and interference on all channels. In the Report and Order in MM Docket No. 88–510, the Commission substituted new groundwave propagation curves for the current curves which allows better prediction of groundwave service and interference. In those actions, the Commission specifically stated that the effective date of the revisions would be established in this proceeding. Accordingly, the appropriate language is included in this Report and Order, and as stated in the **Federal Register** notices of all three decisions, the revised rules are included in the amended text of this action.

Final Regulatory Flexibility Analysis Statement

116. Pursuant to the Regulatory Flexibility Act of 1980, 5 U.S.C. 605, it is certified that this decision will have a significant impact on a substantial number of entities by enacting rules and policies intended to augment the increasingly declining role of AM radio in the competitive marketplace. The goal of this proceeding is to facilitate an overall improvement and revitalization of AM broadcast service. Thus, small businesses associated with AM radio will be effected beneficially, both short term and long term, by the action taken in this Report and Order.

117. It is again important to note that in reaching the decisions made in this Report and Order, the focus has indeed been on those measures that will attain the objective of AM service restoration, rather than on measures that might more directly benefit one or more segments of the industry itself. Therefore, those whose interests have not been fully realized by these actions should note that the Commission has attempted to balance their individual perspectives and needs with the ultimate goal of promoting the revitalization of the AM broadcast service as a whole. However, the overall view of this proceeding is that this revitalization of the AM band outweighs any particular broadcaster's individual perceived needs or desires. The complete text of this Final Regulatory Flexibility Analysis may be found in the full text of this Report and Order.

Ordering Clauses

118. Accordingly, *it is ordered* that pursuant to the authority contained in sections 4 and 303 of the Communications Act of 1934, as amended, 47 U.S.C. 154 and 303, 47 CFR parts 2, 73, and 90 are amended as set forth below, the effective date is contingent upon approval by OMB; a Notice announcing the specific effective date will be placed in the **Federal Register** when it becomes available.

119. *It is further ordered* that the freeze currently in effect on AM broadcast station applications is lifted, the effective date of its removal is contingent upon approval by OMB, and also upon OMB approval of revised FCC application Forms 301 and 302; a Notice announcing the specific effective date will be placed in the **Federal Register** when it becomes available.

120. *It is further ordered*, that the amendments to Part 73 of the Commission's Rules adopted April 12, 1990, in MM Dockets No. 88–508, 88–510, and 89–46, are effective contingent upon approval by OMB; a Notice will be placed in the **Federal Register** announcing the specific effective date when it becomes available.

121. *It is further ordered*, that the petition for rule making filed May 25, 1989 by Earl J. Weinreb is denied.

122. *It is further ordered* that MM Docket No. 87–267 is terminated.

List of Subjects

47 CFR parts 2 and 90

Radio.

47 CFR Part 73

Radio broadcasting.

Federal Communications Commission.

William F. Caton,

Acting Secretary.

Amendatory Text

Part 2 of title 47 of the CFR is amended as follows:

PART 2—[AMENDED]

1. The authority citation for part 2 continues to read as follows:

Authority: 47 U.S.C. 154 and 303

2. Section § 2.106 is amended by revising the 535–1605 kHz band, by adding US321, by revising footnotes US221, US238, US299, NG128 and 480 (International footnotes) and by removing footnote US237 as follows:

§ 2.106 Table of frequency allocations.

* * * * *

United States Table		FCC Use Designators	
Government	Non-government	Rule Part(s)	Special-Use Frequencies
Allocation kHz	Allocation kHz		
(4)	(5)	(6)	(7)
* * *	* * *	* * *	* *
535–1705	535–1705 BROADCASTING	RADIO BROADCASTING (AM) (73). Alaska Fixed (80). Auxiliary Broadcasting (74). Private Land Mobile (90).	535–1705 kHz: Travelers Information.
480 US238, US299, US321,	480 US238, US299, US321, NG128.		

* * * * *

US221 In the 525–535 kHz band, the mobile service is limited to distribution of public service information from Travelers Information Stations operating on 530 kHz.

* * * * *

US238 The 1605–1705 kHz band is allocated to the radiolocation service on a secondary basis.

* * * * *

US299 The 1615–1705 kHz band in Alaska is also allocated to the maritime mobile services and the Alaska fixed service on a secondary basis to Region 2 broadcast operations.

* * * * *

US321 The 535–1705 kHz band is also allocated to the mobile service on a secondary basis for the distribution of public service information from Travelers Information Stations operating on 10 kHz spaced channels from 540 to 1700 kHz.

* * * * *

NG128 In the 535–1705 kHz band, AM broadcast licensees or permittees may use their AM carrier on a secondary basis to transmit signals intended for both broadcast and non-broadcast purposes. In the 88–108 MHz band, FM broadcast licensees or permittees are permitted to use subcarriers on a secondary basis to transmit signals

intended for both broadcast and non-broadcast purposes. In the 54–72, 76–88, 174–216 and 740–890 MHz bands, TV broadcast licensees or permittees are permitted to use subcarriers on a secondary basis for both broadcast and non-broadcast purposes.

* * * * *

480 In Region 2, the use of the 1605–1705 kHz band by stations of the broadcasting service is subject to the Plan established by the Regional Administrative Radio Conference (Rio de Janeiro, 1988).

In Region 2, in the 1625–1705 kHz band, the relationship between the broadcasting, fixed and mobile services is shown in No. 419. However, the examination of frequency assignments to stations of the fixed and mobile services in the 1625–1705 kHz band under No. 1241 shall take account of the allotments appearing in the plan established by the Regional Administrative Radio Conference (Rio de Janeiro, 1988).

* * * * *

Part 73 of title 47 of the CFR is amended as follows:

PART 73—[AMENDED]

3. The authority citation for part 73 continues to read as follows:

Authority: 47 U.S.C. 154 and 303.

4. Section 73.14 is amended by removing the Note following the definition of AM broadcast channel, by removing the definitions of Dominant station and Secondary AM station, by revising the definitions of AM broadcast band, AM broadcast channel, AM broadcast station, Main channel, Maximum percentage of modulation and Stereophonic channel, and by adding definitions of Model I and Model II facilities, to read as follows:

§ 73.14 AM broadcast definitions.

AM broadcast band. The band of frequencies extending from 535 to 1705 kHz.

AM broadcast channel. The band of frequencies occupied by the carrier and the upper and lower sidebands of an AM broadcast signal with the carrier frequency at the center. Channels are designated by their assigned carrier frequencies. The 117 carrier frequencies assigned to AM broadcast stations begin at 540 kHz and progress in 10 kHz steps to 1700 kHz. (See § 73.21 for the classification of AM broadcast channels).

AM broadcast station. A broadcast station licensed for the dissemination of radio communications intended to be received by the public and operated on a channel in the AM broadcast band.

* * * * *

Main channel. The band of audio frequencies from 50 to 10,000 Hz which amplitude modulates the carrier.

Maximum percentage of modulation. The greatest percentage of modulation that may be obtained by a transmitter without producing in its output, harmonics of the modulating frequency in excess of those permitted by these regulations. (See § 73.1570)

* * * * *

Model I facility. A station operating in the 1605–1705 kHz band featuring fulltime operation with stereo, competitive technical quality, 10 kW daytime power, 1 kW nighttime power, non-directional antenna (or a simple directional antenna system), and separated by 400–800 km from other co-channel stations.

Model II facility. A station operating in the 535–1605 kHz band featuring fulltime operation, competitive technical quality, wide area daytime coverage with nighttime coverage at least 15% of the daytime coverage.

* * * * *

Stereophonic channel. The band of audio frequencies from 50 to 10,000 Hz containing the stereophonic information which modulates the radio frequency carrier.

* * * * *

5. Section 73.21 is revised to read as follows:

§ 73.21 Classes of AM broadcast channels and stations.

(a) *Clear channel.* A clear channel is one on which stations are assigned to serve wide areas. These stations are protected from objectionable interference within their primary service areas and, depending on the class of station, their secondary service areas. Stations operating on these channels are classified as follows:

(1) *Class A station.* A Class A station is an unlimited time station that operates on a clear channel and is designed to render primary and secondary service over an extended area and at relatively long distances from its transmitter. Its primary service area is protected from objectionable interference from other stations on the same and adjacent channels, and its secondary service area is protected from interference from other stations on the same channel. (See § 73.182). The operating power shall not be less than 10 kW nor more than 50 kW. (Also see § 73.25(a)).

(2) *Class B station.* A Class B station is an unlimited time station which is designed to render service only over a primary service area. Class B stations are authorized to operate with a minimum power of 0.25 kW (or, if less than 0.25 kW, an equivalent RMS antenna field of at least 141 mV/m at 1 km) and a maximum power of 50 kW, or 10 kW for stations that are authorized to operate in the 1605–1705 kHz band.

(3) *Class D station.* A Class D station operates either daytime, limited time or unlimited time with nighttime power less than 0.25 kW and an equivalent RMS antenna field of less than 141 mV/m at one km. Class D stations shall operate with daytime powers not less than 0.25 kW nor more than 50 kW. Nighttime operations of Class D stations are not afforded protection and must protect all Class A and Class B operations during nighttime hours. New Class D stations that had not been previously licensed as Class B will not be authorized.

(b) *Regional Channel.* A regional channel is one on which Class B and Class D stations may operate and serve primarily a principal center of population and the rural area contiguous thereto.

Note: Until the North American Regional Broadcasting Agreement (NARBA) is terminated with respect to the Bahama Islands and the Dominican Republic, radiation toward those countries from a Class B station may not exceed the level that would be produced by an omnidirectional antenna with a transmitted power of 5 kW, or such lower level as will comply with NARBA requirements for protection of stations in the Bahama Islands and the Dominican Republic against objectionable interference.

(c) *Local channel.* A local channel is one on which stations operate unlimited time and serve primarily a community and the suburban and rural areas immediately contiguous thereto.

(1) *Class C station.* A Class C station is a station operating on a local channel and is designed to render service only over a primary service area that may be reduced as a consequence of interference in accordance with § 73.182. The power shall not be less than 0.25 kW, nor more than 1 kW. Class C stations that are licensed to operate with 0.1 kW may continue to do so.

§ 73.22 [Removed]

6. Section 73.22 is removed.

7. Section 73.3570 is redesignated as § 73.23 and revised to read as follows:

§ 73.23 AM broadcast station applications affected by international agreements.

(a) Except as provided in paragraph (b) of this section, no application for an AM station will be accepted for filing if authorization of the facilities requested would be inconsistent with international commitments of the United States under treaties and other international agreements, arrangements and understandings. (See list of such international instruments in

§ 73.1650(b)). Any such application that is inadvertently accepted for filing will be dismissed.

(b) AM applications that involve conflicts only with the North American Regional Broadcasting Agreement (NARBA), but that are in conformity with the remaining treaties and other international agreements listed in § 73.1650(b) and with the other requirements of this part 73, will be granted subject to such modifications as the FCC may subsequently find appropriate, taking international considerations into account.

(c) In the case of any application designated for hearing on issues other than those related to consistency with international relationships and as to which no final decision has been rendered, whenever action under this section becomes appropriate because of inconsistency with international relationships, the applicant involved shall, notwithstanding the provisions §§ 73.3522 and 73.3571, be permitted to amend its application to achieve consistency with such relationships. In such cases the provisions of § 73.3605(c) will apply.

(d) In some circumstances, special international considerations may require that the FCC, in acting on applications, follow procedures different from those established for general use. In such cases, affected applicants will be informed of the procedures to be followed.

8. In § 73.24, the Note following paragraph (b) is removed, paragraph (e) is revised, paragraph (h) is revised, paragraph (i) is removed, paragraph (j) is redesignated as (i) and is revised, and paragraph (k) is redesignated as (j), as follows:

§ 73.24 Broadcast facilities; showing required.

* * * * *

(e) That the technical equipment proposed, the location of the transmitter, and other technical phases of operation comply with the regulations governing the same, and the requirements of good engineering practice.

* * * * *

(h) That, in the case of an application for a Class B or Class D station on a clear channel, the proposed station would radiate, during two hours following local sunrise and two hours preceding local sunset, in any direction toward the 0.1 mV/m groundwave contour of a co-channel United States Class A station, no more than the maximum value permitted under the provisions of § 73.187.

(i) That, for all stations, the daytime 5 mV/m contour encompasses the entire principal community to be served. That, for stations in the 535–1605 kHz band, 80% of the principal community is encompassed by the nighttime 5 mV/m contour or the nighttime interference-free contour, whichever value is higher. That, for stations in the 1605–1705 kHz band, 50% of the principal community is encompassed by the 5 mV/m contour or the nighttime interference-free contour, whichever value is higher. That, Class D stations with nighttime authorizations need not demonstrate such coverage during nighttime operation.

* * * * *

9. In § 73.25, paragraphs (a)(1), (a)(2), (a)(2)(i), (a)(2)(ii) and (a)(2)(iii) are removed, and the heading, paragraphs (a), (b), and (c) and the Note following paragraph (b) are revised to read as follows:

§ 73.25 Clear channels; Class A, Class B and Class D stations.

* * * * *

(a) On each of the following channels, one Class A station may be assigned, operating with power of 50 kW: 640, 650, 660, 670, 700, 720, 750, 760, 770, 780, 820, 830, 840, 870, 880, 890, 1020, 1030, 1040, 1100, 1120, 1160, 1180, 1200, and 1210 kHz. In Alaska, these frequencies can be used by Class A stations subject to the conditions set forth in § 73.182(a)(1)(ii). On the channels listed in this paragraph, Class B and Class D stations may be assigned.

(b) To each of the following channels there may be assigned Class A, Class B and Class D stations: 680, 710, 810, 850, 940, 1000, 1060, 1070, 1080, 1090, 1110, 1130, 1140, 1170, 1190, 1500, 1510, 1520, 1530, 1540, 1550, and 1560 kHz.

Note: Until superseded by a new agreement, protection of the Bahama Islands shall be in accordance with NARBA. Accordingly, a Class A, Class B or Class D station on 1540 kHz shall restrict its signal to a value no greater than 5 μV/m groundwave or 25 μV/m-10% skywave at any point of land in the Bahama Islands, and such stations operating nighttime (i.e., sunset to sunrise at the location of the U.S. station) shall be located not less than 650 miles from the nearest point of land in the Bahama Islands.

(c) Class A, Class B and Class D stations may be assigned on 540, 690, 730, 740, 800, 860, 900, 990, 1010, 1050, 1220, 1540, 1570, and 1580 kHz.

10. Section 73.26 is revised to read as follows:

§ 73.26 Regional channels; Class B and Class D stations.

(a) The following frequencies are designated as regional channels and are assigned for use by Class B and Class D stations: 550, 560, 570, 580, 590, 600, 610, 620, 630, 790, 910, 920, 930, 950, 960, 970, 980, 1150, 1250, 1260, 1270, 1280, 1290, 1300, 1310, 1320, 1330, 1350, 1360, 1370, 1380, 1390, 1410, 1420, 1430, 1440, 1460, 1470, 1480, 1590, 1600, 1610, 1620, 1630, 1640, 1650, 1660, 1670, 1680, 1690, and 1700 kHz.

(b) Additionally, in Alaska, Hawaii, Puerto Rico, and the U.S. Virgin Islands the frequencies 1230, 1240, 1340, 1400, 1450, and 1490 kHz are designated as Regional channels, and are assigned for use by Class B stations. Stations formerly licensed to these channels in those locations as Class C stations are redesignated as Class B stations.

11. Section 73.27 is revised to read as follows:

§ 73.27 Local channels; Class C stations.

Within the conterminous 48 states, the following frequencies are designated as local channels, and are assigned for use by Class C stations: 1230, 1240, 1340, 1400, 1450, and 1490 kHz.

12. In § 73.28, paragraph (a) is removed, paragraph (b) is redesignated as paragraph (a) and revised, and paragraph (c) is redesignated as (b), as follows:

§ 73.28 Assignment of stations to channels.

(a) The Commission will not make an AM station assignment that does not conform with international requirements and restrictions on spectrum use that the United States has accepted as a signatory to treaties, conventions, and other international agreements. See § 73.1650 for a list of pertinent treaties, conventions and agreements, and § 73.23 for procedural provisions relating to compliance with them.

* * * * *

13. Section 73.29 is revised to read as follows:

§ 73.29 Class C stations on regional channels.

No license will be granted for the operation of a Class C station on a regional channel.

14. A new § 73.30 is added to read as follows:

§73.30 Petition for authorization of an allotment in the 1605–1705 kHz band.

(a) Any party interested in operating an AM broadcast station on one of the ten channels in the 1605–1705 kHz band must file a petition for the establishment of an allotment to its community of license. Each petition must include the following information:

(1) Name of community for which allotment is sought;

(2) Frequency and call letters of the petitioner's existing AM operation; and

(3) Statement as to whether or not AM stereo operation is proposed for the operation in the 1605–1705 kHz band.

(b) Petitions are to be filed during a filing period to be determined by the Commission. For each filing period, eligible stations will be allotted channels based on the following steps:

(1) Stations are ranked in descending order according to the calculated improvement factor.

(2) The station with the highest improvement factor is initially allotted the lowest available channel.

(3) Successively, each station with the next lowest improvement factor, is allotted an available channel taking into account the possible frequency and location combinations and relationship to previously selected allotments. If a channel is not available for the subject station, previous allotments are examined with respect to an alternate channel, the use of which would make a channel available for the subject station.

(4) When it has been determined that, in accordance with the above steps, no channel is available for the subject station, that station is no longer considered and the process continues to the station with the next lowest improvement factor.

(c) If awarded an allotment, a petitioner will have sixty (60) days from the date of public notice of selection to file an application for construction permit on FCC Form 301. (See §§73.24 and 73.37(e) for filing requirements). Unless instructed by the Commission to do otherwise, the application shall specify Model I facilities. (See § 73.14). Upon grant of the application and subsequent construction of the authorized facility, the applicant must file a license application on FCC Form 302.

Note 1: Until further notice by the Commission, the filing of these petitions is limited to licensees of existing AM stations (excluding Class C stations) operating in the 535–1605 kHz band. Selection among competing petitions will be based on interference reduction. Notwithstanding the exception in Note 4, within each operational category, the station demonstrating the highest value of improvement factor will be afforded the highest priority for an allotment, with the next priority assigned to the station with next lowest value, and so on, until available allotments are filled.

Note 2: The Commission will periodically evaluate the progress of the movement of stations from the 535–1605 kHz band to the 1605–1705 kHz band to determine whether the 1605–1705 kHz band should continue to be administered on an allotment basis or modified to an assignment method. If appropriate, the Commission will later develop further procedures for use of the 1605–1705 kHz band by existing station licensees and others.

Note 3: Existing fulltime stations are considered first for selection as described in Note 1. In the event that an allotment availability exists for which no fulltime station has filed a relevant petition, such allotment may be awarded to a licensed Class D station. If more than one Class D station applies for this migration opportunity, the following priorities will be used in the selection process: First priority—A Class D station located within the 0.5 mV/m-50% contour of a U.S. Class A station and licensed to serve a community of 100,000 or more, for which there exists no local fulltime aural service; second priority—Class D stations ranked in order of improvement factor, from highest to lowest, considering only those stations with improvement factors greater than zero.

Note 4: The preference for AM stereo in the expanded band will be administered as follows: When an allotment under consideration (candidate allotment) conflicts with one or more previously selected allotments (established allotments) and cannot be accommodated in the expanded band, the candidate allotment will be substituted for the previously established allotment provided that: The petitioner for the candidate allotment has made a written commitment to the use of AM stereo and the petitioner for the established allotment has not; the difference between the ranking factors associated with the candidate and established allotments does not exceed 10% of the ranking factor of the candidate allotment; the substitution will not require the displacement of more than one established allotment; and both the candidate allotment and the established allotment are within the same priority group.

15. Section 73.35 is added to read as follows:

§73.35 Calculation of improvement factors.

A petition for an allotment (See §73.30) in the 1605–1705 kHz band filed by an existing fulltime AM station licensed in the 535–1605 kHz band will be ranked according to the station's calculated improvement factor. (See §73.30). Improvement factors relate to both nighttime and daytime interference conditions and are based on two distinct considerations: (a) Service area lost by other stations due to interference caused by the subject station, and (b) service area of the subject station. These considerations are represented by a ratio. The ratio consists, where applicable, of two separate additive components, one for nighttime and one for daytime. For the nighttime component, to determine the numerator of the ratio (first consideration), calculate the RSS and associated service area of the stations (co- and adjacent channel) to which the subject station causes nighttime interference. Next, repeat the RSS and service area calculations excluding the subject station. The cumulative gain in the above service area is the numerator of the ratio. The denominator (second consideration) is the subject station's interference-free service area. For the daytime component, the composite amount of service lost by co-channel and adjacent channel stations, each taken individually, that are affected by the subject station, excluding the effects of other assignments during each study, will be used as the numerator of the daytime improvement factor. The denominator will consist of the actual daytime service area (0.5 mV/m contour) less any area lost to interference from other assignments. The value of this combined ratio will constitute the petitioner's improvement factor. Notwithstanding the requirements of §73.153, for uniform comparisons and simplicity, measurement data will not be used for determining improvement factors and FCC figure M-3 ground conductivity values are to be used exclusively in accordance with the pertinent provisions of §73.183(c)(1).

16. Section 73.37 is revised to read as follows:

§73.37 Applications for broadcast facilities, showing required.

(a) No application will be accepted for a new station if the proposed operation would involve overlap of signal strength contours with any other station as set forth below in this paragraph; and no application will be accepted for a change of the facilities of an existing station if the proposed change would involve such overlap where there is not already such overlap between the stations involved:

Frequency separation (kHz)	Contour of proposed station (classes B, C and D) (mV/m)	Contour of any other station (mV/m)
0	0.005	0.100 (Class A).
	0.025	0.500(Other classes).
	0.500	0.025 (All classes).
10	0.250	0.500(All classes).
	0.500	0.250 (All classes).
20	5	5 (All classes).
	5	5 (All classes).
30	25	25 (All classes).

(b) In determining overlap received, an application for a new Class C station with daytime power of 250 watts, or greater, shall be considered on the assumption that both the proposed operation and all existing Class C stations operate with 250 watts and utilize non-directional antennas.

(c) If otherwise consistent with the public interest, an application requesting an increase in the daytime power of an existing Class C station on a local channel from 250 watts to a maximum of 1kW, or from 100 watts to a maximum of 500 watts, may be granted notwithstanding overlap prohibited by paragraph (a) of this section. In the case of a 100 watt Class C station increasing daytime power, the provisions of this paragraph shall not be construed to permit an increase in power to more than 500 watts, if prohibited overlap would be involved, even if successive applications should be tendered.

(d) In addition to demonstrating compliance with paragraphs (a), and, as appropriate, (b), and (c) of this section, an application for a new AM broadcast station, or for a major change (see § 73.3571(a)(1)) in an authorized AM broadcast station, as a condition for its acceptance, shall make a satisfactory showing, if new or modified nighttime operation by a Class B station is proposed, that objectionable interference will not result to an authorized station, as determined pursuant to § 73.182(1).

(e) An application for an authorization in the 1605–1705 kHz band which has been selected through the petition process (See § 73.30) is not required to demonstrate compliance with paragraph (a), (b), (c), or (d) of this section. Instead, the applicant need only comply with the terms of the allotment authorization issued by the Commission in response to the earlier petition for establishment of a station in the 1605–1705 kHz band. Within the allotment authorization, the Commission will specify the assigned frequency and the applicable technical requirements.

(f) Stations on 1580, 1590 and 1600 kHz. In addition to the rules governing the authorization of facilities in the 535–1605 kHz band, stations on these frequencies seeking facilities modifications must protect assignments in the 1610–1700 kHz band. Such protection shall be afforded in a manner which considers the spacings that occur or exist between the subject station and a station within the range 1605–1700 kHz. The spacings are the same as those specified for stations in the frequency band 1610–1700 kHz or the current separation distance, whichever is greater. Modifications that would result in a spacing or spacings that fails to meet any of the separations must include a showing that appropriate adjustment has been made to the radiated signal which effectively results in a site-to-site radiation that is equivalent to the radiation of a station with standard Model I facilities (10 kW–D, 1 kW–N, non-DA, 90 degree antenna ht. & ground system) operating in compliance with all of the above separation distances. In those cases where that radiation equivalence value is already exceeded, a station may continue to maintain, but not increase beyond that level.

Note 1: In the case of applications for changes in the facilities of AM broadcast stations covered by this section, an application will be accepted even though overlap of field strength contours as mentioned in this section would occur with another station in an area where such overlap does not already exist, if:

(1) The total area of overlap with that station would not be increased;

(2) There would be no net increase in the area of overlap with any other station; and

(3) There would be created no area of overlap with any station with which overlap does not now exist.

Note 2: The provisions of this section concerning prohibited overlap of field strength contours will not apply where:

(1) The area of overlap lies entirely over sea water; or

(2) The only overlap involved would be that caused to a foreign station, in which case the provisions of the applicable international agreement, as identified in § 73.1650, will apply. When overlap would be received from a foreign station, the provisions of this section will apply, except where there would be overlap with a foreign station with a frequency separation of 20 kHz, in which case the provisions of the international agreement will apply in lieu of this section.

Note 3: In determining the number of "authorized" aural transmission facilities in a given community, applications for that community in hearing or otherwise having protected status under specified "cut-off" procedures shall be considered an existing stations. In the event that there are two or more mutually exclusive protected applications seeking authorization for the proposed community it will be assumed that only one is "authorized."

Note 4: A "transmission facility" for a community is a station licensed to the community. Such a station provides a "transmission service" for that community.

17. In § 73.53, paragraph (b)(1) is revised and a new Note is added after paragraph (c) to read as follows:

§ 73.53 Requirements for authorization of antenna monitors.

* * * * *

(b) * * *

(1) The monitor shall be designed to operate in the 535–1705 kHz band.

* * * * *

Note: In paragraph (b)(1) of this section, the requirement that monitors be capable of operation in the 535–1705 kHz band shall apply only to equipment manufactured after July 1, 1992. Use of a monitor in the 1605–1705 kHz bank which is not approved for such operation will be permitted pending the general availability of 535–1705 kHz band monitors if a manufacturer can demonstrate, in the interim, that is monitor performs in accordance with the standards in this section on these 10 channels.

18. In § 73.68, paragraph (d)(3) is revised to read as follows:

§ 73.68 Sampling systems for antenna monitors.

* * * * *

(d) * * *

(3) If that portion of the sampling system above the base of the towers is modified or components replaced, a partial proof of performance shall be executed in accordance with § 73.154 subsequent to these changes. The partial proof of performance shall be accompanied by common point impedance measurements made in accordance with § 73.54.

* * * * *

19. In § 73.69, paragraph (d)(4) is revised to read as follows:

§ 73.69 Antenna monitors.

* * * * *

(d) * * *

(4) If it cannot be established by the observations required in paragraph (d)(2) of this section that base current ratios and monitoring point values are within the tolerances or limits prescribed by the rules and the instrument of authorization, or if the substitution of the new antenna monitor for the old results in changes in these parameters, a partial proof of performance shall be executed and analyzed in accordance with § 73.154.

* * * * *

20. In § 73.72, paragraph (a) is revised to read as follows:

§ 73.72 Operating during the experimental period.

(a) An AM station may operate during the experimental period (the time between midnight and sunrise, local time) on its assigned frequency and with its authorized power for the routine testing and maintenance of its transmitting system, and for conducting experimentation under an experimental authorization, provided no interference is caused to other stations maintaining a regular operating schedule within such period.

* * * * *

21 § 73.88, a new Note is added after the introductory language to read as follows:

§ 73.88 Blanketing interference.

* * * * *

Note: For more detailed instructions concerning operational responsibilities of

licensees and permittees under this section, see § 73.318 (b), (c) and (d).

22. Section 73.99 is revised to read as follows:

§ 73.99 Presunrise service authorization (PSRA) and postsunset service authorization (PSSA).

(a) To provide maximum uniformity in early morning operation compatible with interference considerations, and to provide for additional service during early evening hours for Class D stations, provisions are made for presunrise service and postsunset service. The permissible power for presunrise or postsunset service authorizations shall not exceed 500 watts, or the authorized daytime or critical hours (whichever is less). Calculation of the permissible power shall consider only co-channel stations for interference protection purposes.

(b) Presunrise service authorizations (PSRA) permit:

(1) Class D stations operating on Mexican, Bahamian, and Canadian priority Class A clear channels to commence PSRA operation at 6 a.m. local time and to continue such operation until the sunrise times specified in their basic instruments of authorization.

(2) Class D stations situated outside 0.5 mV/m-50% skywave contours of co-channel U.S. Class A stations to commence PSRA operation at 6 a.m. local time and to continue such operation until sunrise times specified in their basic instruments of authorization.

(3) Class D stations located within co-channel 0.5 mV/m-50% skywave contours of U.S. Class A stations, to commence PSRA operation either at 6 a.m. local time, or at sunrise at the nearest Class A station located east of the Class D station (whichever is later), and to continue such operation until the sunrise times specified in their basic instruments of authorization.

(4) Class B and Class D stations on regional channels to commence PSRA operation at 6 a.m. local time and to continue such operation until local sunrise times specified in their basic instruments of authorization.

(c) Extended Daylight Saving Time Pre-Sunrise Authorizations:

(1) Between the first Sunday in April and the end of the month of April, Class D stations will be permitted to conduct pre-sunrise operation beginning at 6 a.m. local time with a maximum power of 500 watts (not to exceed the station's regular daytime or critical hours power), reduced as necessary to comply with the following requirements:

(i) Full protection is to be provided as specified in applicable international agreements.

(ii) Protection is to be provided to the 0.5 mV/m groundwave signals of co-channel U.S. Class A stations; protection to the 0.5 mV/m-50% skywave contours of these stations is not required.

(iii) In determining the protection to be provided, the effect of each interfering signal will be evaluated separately. The presence of interference from other stations will not reduce or eliminate the required protection.

(iv) Notwithstanding the requirements of paragraph (c)(1) (ii) and (iii) of this section, the stations will be permitted to operate with a minimum power of 10 watts unless a lower power is required by international agreement.

(2) The Commission will issue appropriate authorizations to Class D stations not previously eligible to operate during this period. Class D stations authorized to operate during this presunrise period may continue to operate under their current authorization.

(d) Postsunset service authorizations (PSSA) permit:

(1) Class D stations located on Mexican, Bahamian, and Canadian priority Class A clear channels to commence PSSA operation at sunset times specified in their basic instruments of authorization and to continue for two hours after such specified times.

(2) Class D stations situated outside 0.5 mV/m-50% skywave contours of co-channel U.S. Class A Stations to commence PSSA operations at sunset times specified in their basic instruments of authorization and to continue for two hours after such specified times.

(3) Class D stations located within co-channel 0.5 mV/m-50% skywave contours of U.S. Class A stations to commence PSSA operation at sunset times specified in their basic instruments of authorization and to continue such operation until two hours past such specified times, or until sunset at the nearest Class A station located west of the Class D station, whichever is earlier. Class D stations located west of the Class A station do not qualify for PSSA operation.

(4) Class D stations on regional channels to commence PSSA operation at sunset times specified on their basic instruments of authorization and to continue such operation until two hours past such specified times.

(e) Procedural Matters. (1) Applications for PSRA and PSSA operation are not required. Instead, the FCC will calculate the periods of such operation and the power to be used pursuant to the provisions of this section and the protection requirements contained in applicable international agreements. Licensees will be notified of permissible power and times of operation. Presunrise and Postsunset service authority permits operation on a secondary basis and does not confer license rights. No request for such authority need be filed. However, stations intending to operate PSRA or PSSA shall submit by letter, signed as specified in § 73.3513, the following information:

(i) Licensee name, station call letters and station location,

(ii) Indication as to whether PSRA operation, PSSA operation, or both, is intended by the station,

(iii) A description of the method whereby any necessary power reduction will be achieved.

(2) Upon submission of the required information, such operation may begin without further authority.

(f) Technical Criteria. Calculations to determine whether there is objectionable interference will be determined in accordance with the AM Broadcast Technical Standards, §§ 73.182 through 73.190, and applicable international agreements. Calculations will be performed using daytime antenna systems, or critical hours antenna systems when specified on the license. In performing calculations to determine assigned power and times for commencement of PSRA and PSSA operation, the following standards and criteria will be used:

(1) Class D stations operating in accordance with paragraphs (b)(1), (b)(2), (d)(1), and (d)(2) of this section are required to protect the nighttime 0.5 mV/m-50% skywave contours of co-channel Class A stations. Where a 0.5 mV/m-50% skywave signal from the Class A station is not produced, the 0.5 mV/m groundwave contour shall be protected.

(2) Class D stations are required to fully protect foreign Class B and Class C stations when operating PSRA and PSSA; Class D stations operating PSSA are required to fully protect U.S. Class B stations. For purposes of determining protection, the nighttime RSS limit will be used in the determination of maximum permissible power.

(3) Class D stations operating in accordance with paragraphs (d)(2) and (d)(3) of this section are required to restrict maximum 10% skywave radiation at any point on the daytime 0.1 mV/m groundwave contour of a co-channel Class A station to 25 μV/m. The

location of the 0.1 mV/m contour of the Class A station will be determined by use of Figure M3, *Estimated Ground Conductivity in the United States*. When the 0.1 mV/m contour extends beyond the national boundary, the international boundary shall be considered the 0.1 mV/m contour.

(4) Class B and Class D stations on regional channels operating PSRA and PSSA (Class D only) are required to provide full protection to co-channel foreign Class B and Class C stations.

(5) Class D stations on regional channels operating PSSA beyond 6 p.m. local time are required to fully protect U.s. Class B stations.

(6) The protection that Class D stations on regional channels are required to provide when operating PSSA until 6 p.m. local time is as follows.

(i) For the first half-hour of PSSA operation, protection will be calculated at sunset plus 30 minutes at the site of the Class D station;

(ii) For the second half-hour of PSSA operation, protection will be calculated at sunset plus one hour at the site of the Class D station;

(iii) For the second hour of PSSA operation, protection will be calculated at sunset plus two hours at the site of the Class D station;

(iv) Minimum powers during the period until 6 p.m. local time shall be permitted as follows:

Calculated power	Adjusted minimum power
From 1 to 45 watts	50 watts.
Above 45 to 70 watts	75 watts.
Above 70 to 100 watts	100 watts.

(7) For protection purposes, the nighttime RSS limit will be used in the determination of maximum permissible power.

(g) Calculations made under paragraph (d) of this section may not take outstanding PSRA or PSSA operations into account, nor will the grant of a PSRA or PSSA confer any degree of interference protection on the holder thereof.

(h) Operation under a PSRA or PSSA is not mandatory, and will not be included in determining compliance with the requirements of § 73.1740. To the extent actually undertaken, however, presunrise operation will be considered by the FCC in determining overall compliance with past programming representations and station policy concerning commercial matter.

(i) The PSRA or PSSA is secondary to the basic instrument of authorization with which it is to be associated. The PSRA or PSSA may be suspended, modified, or withdrawn by the FCC without prior notice or right to hearing, if necessary to resolve interference conflicts, to implement agreements with foreign governments, or in other circumstances warranting such action. Moreover, the PSRA or PSSA does not extend beyond the term of the basic authorization.

(j) The Commission will periodically recalculate maximum permissible power and times for commencing PSRA and PSSA for each Class D station operating in accordance with paragraph (c) of this section. The Commission will calculate the maximum power at which each individual station may conduct presunrise operations during extended daylight saving time and shall issue conforming authorizations. These original notifications and subsequent notifications should be associated with the station's authorization. Upon notification of new power and time of commencing operation, affected stations shall make necessary adjustments within 30 days.

(k) A PSRA and PSSA does not require compliance with §§ 73.45, 73.182 and 73.1560 where the operation might otherwise be considered as technically substandard. Further, the requirements of paragraphs (a)(5), (b)(2), (c)(2), and (d)(2) of § 73.1215 concerning the scale ranges of transmission system indicating instruments are waived for PSRA and PSSA operation except for the radio frequency ammeters used in determining antenna input power.

(l) A station having an antenna monitor incapable of functioning at the authorized PSRA and PSSA power when using a directional antenna shall take the monitor reading using an unmodulated carrier at the authorized daytime power immediately prior to commencing PSRA or PSSA operations. Special conditions as the FCC may deem appropriate may be included for PSRA or PSSA to insure operation of the transmitter and associated equipment in accordance with all phases of good engineering practice.

23. Section 73.150 is amended by revising paragraphs (a) introductory text, (b)(1) introductory text, (b)(2), (b)(3), (b)(5)(iv), (b)(5)(v), and (b)(6)(vii), by changing all references to miles in paragraph (b)(1)(i) to kilometers, and by revising equation 2 and the remaining formulas in paragraph (b)(1)(i) to read as follows:

§ 73.150 Directional antenna systems.

(a) For each station employing a directional antenna, all determinations of service provided and interference caused shall be based on the inverse distance fields of the standard radiation pattern for that station. (As applied to nighttime operation the term "standard radiation pattern" shall include the radiation pattern in the horizontal plane, and radiation patterns at angles above this plane.)

* * * * *

(b) * * *

(1) The standard radiation pattern for the proposed antenna in the horizontal plane, and where pertinent, tabulated values for the azimuthal radiation patterns for angles of elevation up to and including 60 degrees, with a separate section for each increment of 5 degrees.

(i) * * *

where:

$E(\phi,\theta)_{th}$ represents the theoretical inverse distance fields at one kilometer for the given azimuth and elevation.

* * * * *

The standard radiation pattern shall be constructed in accordance with the following mathematical expression:

$$E(\phi,\theta)_{std} = 1.05\sqrt{[E(\phi,\theta)_{th}]^2 + Q^2}$$

(Eq. 2)

where:

$E(\phi,\theta)_{std}$ represents the inverse distance fields at one kilometer which are produced by the directional antenna in the horizontal and vertical planes.

$E(\phi,\theta)_{th}$ represents the theoretical inverse distance fields at one kilometer as computed in accordance with Eq. 1, above.

Q is the greater of the following two quantities: $0.025g(\theta)\ E_{rss}$ or $10.0g(\theta)\sqrt{P_{kW}}$

where:

$g(\theta)$ is the vertical plane distribution factor, $f(\theta)$, for the shortest element in the array (see Eq. 2, above; also see § 73.190, Figure 5). If the shortest element has an electrical height in excess of 0.5 wavelength, $g(\theta)$ shall be computed as follows:

$$g(\theta) = \frac{\sqrt{|f(\theta)|^2 + 0.0625}}{1.030776}$$

E_{rss} is the root sum square of the amplitudes of the inverse fields of the elements of the array in the horizontal plane, as used in the expression for $E(\phi,\theta)_{th}$ (see Eq. 1, above), and is computed as follows:

$$E_{rss} = k\sqrt{\sum_{i=1}^{n} F_i^2}$$

P_{kw} is the nominal station power expressed in kilowatts, see § 73.14. If the nominal power is less than one kilowatt, P_{kw}f five degrees, beginning with zero degrees representing true north, and, shall be plotted to the largest scale possible on unglazed letter-size paper (main engraving approximately 7" × 10") using only scale divisions and subdivisions of 1,2,2.5, or 5 times 10^{nth}. The horizontal plane pattern shall be plotted on polar coordinate paper, with the zero degree point corresponding to true north. Patterns for elevation angles above the horizontal plane may be plotted in polar or rectangular coordinates, with the pattern for each angle of elevation on a separate page. Rectangular plots shall begin and end at true north, with all azimuths labelled in increments of not less than 20 degrees. If a rectangular plot is used, the ordinate showing the scale for radiation may be logarithmic. Such patterns for elevation angles above the horizontal plane need be submitted only upon specific request by Commission staff. Minor lobe and null detail occurring between successive patterns for specific angles of elevation need not be submitted. Values of field strength on any pattern less than ten percent of the maximum field strength plotted on that pattern shall be shown on an enlarged scale. Rectangular plots with a logarithmic ordinate need not utilize an expanded scale unless necessary to show clearly the minor lobe and null detail.

(3) The effective (RMS) field strength in horizontal plane of $E(\phi,\theta)_{std}$, $E(\phi,\theta)_{th}$ and the root-sum-square (RSS) value of the inverse distance fields of the array elements at 1 kilometer, derived from the equation for $E(\phi,\theta)_{th}$. These values shall be tabulated on the page on which the horizontal plane pattern is plotted, which shall be specifically labelled as the Standard Harizontal Plane Pattern.

(4) * * *

(5) * * *

(iv) Where waiver of the content of this section is requested or upon request of the Commission staff, all assumptions made and the basis therefor, particularly with respect to the electrical height of the elements, current distribution along elements, efficiency of each element, and ground conductivity.

(v) Where waiver of the content of this section is requested, or upon request of the Commission staff, those formulas used for computing $E(\phi,\theta)_{th}$ and $E(\phi,\theta)_{std}$. Complete tabulation of final computed data used in plotting patterns, including data for the determination of the RMS value of the pattern, and the RSS field of the array.

(6) * * *

(vii) Additional requirements relating to modified standard patterns appear in § 73.152(c)(3) and (c)(4).

* * * * *

24. Section 73.151 is amended by adding a new paragraph (b) to read as follows:

§ 73.151 Field strength measurements to establish performance of directional antennas.

* * * * *

(b) For stations authorized to operate with simple directional antenna systems (*e.g.*, two towers) in the 1605–1705 kHz band, the measurements to support pattern RMS compliance referred to in paragraphs (a)(1)(ii) and (a)(1)(iii) of this section are not required. In such cases, measured radials are required only in the direction of short-spaced allotments, or in directions specifically identified by the Commission.

25. Section 73.152 is amended by adding new paragraphs (c)(2)(iv).

§ 73.152 Modification of directional antenna data.

* * * * *

(c) * * *

(2) * * *

(iv) Where the measured inverse distance field exceeds the value permitted by the standard pattern, and augmentation is allowable under the terms of this section, the requested amount of augmentation shall be centered upon the azimuth of the radial upon which the excessive radiation was measured and shall not exceed the following:

(A) The actual measured inverse distance field value, where the radial does not involve a required monitoring point.

(B) 120% of the actual measured inverse field value, where the radial has a monitoring point required by the instrument of authorization.

Whereas some pattern smoothing can be accommodated, the extent of the requested span(s) shall be minimized and in no case shall a requested augmentation span extend to a radial azimuth for which the analyzed measurement data does not show a need for augmentation.

* * * * *

26. Section 73.153 is amended by revising the last sentence in the paragraph to read as follows:

§ 73.153 Field strength measurements in support of applications or evidence at hearings.

* * * The antenna resistance measurements required by § 73.186 need not be taken or submitted.

27. Section 73.182 is revised to read as follows:

§ 73.182 Engineering standards of allocation.

(a) Sections 73.21 to 73.37, inclusive, govern allocation of facilities in the AM broadcast band 535–1705 kHz. § 73.21 establishes three classes of channels in this band, namely, clear, regional and local. The classes and power of AM broadcast stations which will be assigned to the various channels are set forth in § 73.21. The classifications of the AM broadcast stations are as follows:

(1) Class A stations operate on clear channels with powers no less than 10kW nor greater than 50 kW. These stations are designed to render primary and secondary service over an extended area, with their primary services areas protected from objectionable interference from other stations on the same and adjacent channels. Their secondary service areas are protected from objectionable interference from co-channel stations. For purposes of protection, Class A stations may be divided into two groups, those located in any of the contiguous 48 States and those located in Alaska in accordance with § 73.25.

(i) The mainland U.S. Class A stations are those assigned to the channels allocated by § 73.25. The power of these stations shall be 50 kW. The Class A stations in this group are afforded protection as follows:

(A) Daytime. To the 0.1 mV/m groundwave contour from stations on the same channel, and to the 0.5 mV/m groundwave contour from stations on adjacent channels.

(B) Nighttime. To the 0.5 mV/m-50% skywave contour from stations on the same channels.

(ii) Class A stations in Alaska operate on the channels allocated by § 73.25 with a minimum power of 10 kW, a maximum power of 50 kW, and an antenna efficiency of 282 mV/m/kW at 1 kilometer. Stations operating on these channels in Alaska which have not been designated as Class A stations in response to licensee request will continue to be considered as Class B stations. During daytime hours a Class A station in Alaska is protected to the 100 μV/m groundwave contour from co-channel stations. During nighttime hours, a Class A station in Alaska is

protected to the 100 μV/m-50 percent skywave contour from co-channel stations. The 0.5 mV/m groundwave contour is protected both daytime and nighttime from stations on adjacent channels.

Note: In the Report and Order in MM Docket No. 83-807, the Commission designated 15 stations operating on U.S. clear channels as Alaskan Class A stations. Eleven of these stations already have Alaskan Class A facilities and are to be protected accordingly. Permanent designation of the other four stations as Alaskan Class A is conditioned on their constructing minimum Alaskan Class A facilities no later than December 31, 1989. Until that date or until such facilities are obtained, these four stations shall be temporarily designated as Alaskan Class A stations, and calculations involving these stations should be based on existing facilities but with an assumed power of 10 kW. Thereafter, these stations are to be protected based on their actual Alaskan Class A facilities. If any of these stations does not obtain Alaskan Class A facilities in the period specified, it is to be protected as a Class B station based on its actual facilities. These four stations may increase power to 10 kW without regard to the impact on co-channel Class B stations. However, power increases by these stations above 10 kW (or by existing Alaskan Class A stations beyond their current power level) are subject to applicable protection requirements for co-channel Class B stations. Other stations not on the original list but which meet applicable requirements may obtain Alaskan Class A status by seeking such designation from the Commission. If a power increase or other change in facilities by a station not on the original list is required to obtain minimum Alaskan Class A facilities, any such application shall meet the interference protection requirements applicable to an Alaskan Class A proposal on the channel.

(2) Class B stations are stations which operate on clear and regional channels with powers not less than 0.25 kW nor more than 50 kW. These stations render primary service only, the area of which depends on their geographical location, power, and frequency. It is recommended that Class B stations be located so that the interference received from other stations will not limit the service area to a groundwave contour value greater than 2.0 mV/m nighttime and to the 0.5 mV/m groundwave contour daytime, which are the values for the mutual protection between this class of stations and other stations of the same class.

Note: See §§ 73.21(b)(1) and 73.26(b) concerning power restrictions and classifications relative to Class B, Class C, and Class D stations in Alaska, Hawaii, Puerto Rico and the U.S. Virgin Islands. Stations in the above-named places that are reclassified from Class C to Class B stations under § 73.26(b) shall not be authorized to increase power to levels that would increase the nighttime interference-free limit of co-channel Class C stations in the conterminous United States.

(3) Class C stations operate on local channels, normally rendering primary service to a community and the suburban or rural areas immediately contiguous thereto, with powers not less than 0.25 kW, nor more than 1 kW, except as provided in § 73.21(c)(1). Such stations are normally protected to the daytime 0.5 mV/m contour. On local channels the separation required for the daytime protection shall also determine the nighttime separation. Where directional antennas are employed daytime by Class C stations operating with more than 0.25 kW power, the separations required shall in no case be less than those necessary to afford protection, assuming nondirectional operation with 0.25 kW. In no case will 0.25 kW or greater nighttime power be authorized to a station unable to operate nondirectionally with a power of 0.25 kW during daytime hours. The actual nighttime limitation will be calculated. For nighttime protection purposes, Class C stations in the 48 contiguous United States may assume that stations in Alaska, Hawaii, Puerto Rico, and the U.S. Virgin Islands operating on 1230, 1240, 1340, 1400, 1450, and 1490 kHz are Class C stations.

(4) Class D stations operate on clear and regional channels with daytime powers of not less than 0.25 kW (or equivalent RMS field of 141 mV/m at one kilometer if less than 0.25 kW) and not more than 50 kW. Class D stations that have previously received nighttime authority operate with powers of less than 0.25 kW (or equivalent RMS fields of less than 141 mV/m at one kilometer) are not required to provide nighttime coverage in accordance with § 73.24(j) and are not protected from interference during nighttime hours. Such nighttime authority is permitted on the basis of full nighttime protection being afforded to all Class A and Class B stations.

(b) When a station is already limited by interference from other stations to a contour value greater than that normally protected for its class, the individual received limits shall be the established standard for such station with respect to interference from each other station.

(c) The four classes of AM broadcast stations have in general three types of service areas, i.e., primary, secondary and intermittent. (See § 73.14 for the definitions of primary, secondary, and intermittent service areas.) Class A stations render service to all three areas. Class B stations render service to a primary area but the secondary and intermittent service areas may be materially limited or destroyed due to interference from other stations, depending on the station assignments involved. Class C and Class D stations usually have only primary service areas. Interference from other stations may limit intermittent service areas and generally prevents any secondary service to those stations which operate at night. Complete intermittent service may still be obtained in many cases depending on the station assignments involved.

(d) The groundwave signal strength required to render primary service is 2 mV/m for communities with populations of 2,500 or more and 0.5 mV/m for communities with populations of less than 2,500. See § 73.184 for curves showing distance to various groundwave field strength contours for different frequencies and ground conductivities, and also see § 73.183, "Groundwave signals."

(e) A Class C station may be authorized to operate with a directional antenna during daytime hours providing the power is at least 0.25 kW. In computing the degrees of protection which such antenna will afford, the radiation produced by the directional antenna system will be assumed to be no less, in any direction, than that which would result from non-directional operation using a single element of the directional array, with 0.25 kW.

(f) All classes of broadcast stations have primary service areas subject to limitation by fading and noise, and interference from other stations to the contours set out for each class of station.

(g) Secondary service is provided during nighttime hours in areas where the skywave field strength, 50% or more of the time, is 0.5 mV/m or greater (0.1 mV/m in Alaska). Satisfactory secondary service to cities is not considered possible unless the field strength of the skywave signal approaches or exceeds the value of the groundwave field strength that is required for primary service. Secondary service is subject to some interference and extensive fading whereas the primary service area of a station is subject to no objectionable interference or fading. Only Class A stations are assigned on the basis of rendering secondary service.

Note: Standards have not been established for objectionable fading because of the relationship to receiver characteristics. Selective fading causes audio distortion and signal strength reduction below the noise level, objectionable characteristics inherent in many modern receivers. The AVC circuits in the better designed receivers generally maintain the audio output at a sufficiently

constant level to permit satisfactory reception during most fading conditions.

(h) Intermittent service is rendered by the groundwave and begins at the outer boundary of the primary service area and extends to a distance where the signal strength decreases to a value that is too low to provide any service. This may be as low as a few $\mu V/m$ in certain areas and as high as several millivolts per meter in other areas of high noise level, interference from other stations, or objectionable fading at night. The intermittent service area may vary widely from day to night and generally varies over shorter intervals of time. Only Class A stations are protected from interference from other stations to the intermittent service area.

(i) Broadcast stations are licensed to operate unlimited time, limited time, daytime, share time, and specified hours. (See §§ 73.1710, 73.1725, 73.1720, 73.1715, and 73.1730.) Applications for new stations shall specify unlimited time operation only.

(j) Section 73.24 sets out the general requirements for modifying the facilities of a licensed station and for establishing a new station. Sections 73.24(b) and 73.37 include interference related provisions that be considered in connection with an application to modify the facilities of an existing station or to establish a new station. Section 73.30 describes the procedural steps required to receive an authorization to operate in the 1605–1705 kHz band.

(k) Objectionable nighttime interference from a broadcast station occurs when, at a specified field strength contour with respect to the desired station, the field strength of an undesired station (co-channel or first adjacent channel, after application of proper protection ratio) exceeds for 10% or more of the time the values set forth in these standards. The value derived from the root-sum-square of all interference contributions represents the extent of a station's interference-free coverage.

(l) With respect to the root-sum-square (RSS) values of interfering field strengths referred to in this section, calculation of nighttime interference-free service is accomplished by considering the signals on the three channels of concern (co- and first adjacencies) in order of decreasing magnitude, adding the squares of the values and extracting the square root of the sum, excluding those signals which are less than 50% of the RSS values of the higher signals already included.

(2) With respect to the root-sum-square values of interfering field strengths referred to in this section, calculation of nighttime interference for non-coverage purposes is accomplished by considering the signals on the three channels of concern (co- and first adjacencies) in order of decreasing magnitude, adding the squares of the values and extracting the square root of the sum, excluding those signals which are less than 25% of the RSS values of the higher signals already included.

(3) With respect to the root-sum-square values of interfering field strengths referred to in this section, calculation is accomplished by considering the signals on the three channels of concern (co- and first adjacencies) in order of decreasing magnitude, adding the squares of the values and extracting the square root of the sum. The 0% exclusion method applies only to the determination of an improvement factor value for evaluating a station's eligibility for migration to the band 1605–1705 kHz.

(4) The RSS value of the nighttime interference-free contour will not be considered to be increased when a new interfering signal is added which is less than 50% of the RSS value of the interference from existing stations, and which at the same time is not greater than the smallest signal included in the RSS value of interference from existing stations.

(5) It is recognized that application of the above "50% exclusion" method (or any exclusion method using a per cent value greater than zero) of calculating the RSS interference may result in some cases in anomalies wherein the addition of a new interfering signal or the increase in value of an existing interfering signal will cause the exclusion of a previously included signal and may cause a decrease in the calculated RSS value of interference. In order to provide the Commission with more realistic information regarding gains and losses in service (as a basis for determination of the relative merits of a proposed operation) the following alternate method for calculating the proposed RSS values of interference will be employed wherever applicable.

(6) In the cases where it is proposed to add a new interfering signal which is not less than 50% (or 25%, depending on which study is being performed) of the RSS value of interference from existing stations or which is greater that the smallest signal already included to obtain this RSS value, the RSS limitation after addition of the new signal shall be calculated without excluding any signal previously included. Similarly, in cases where it is proposed to increase the value of one of the existing interfering signals which has been included in the RSS value, the RSS limitation after the increase shall be calculated without excluding the interference from any source previously included.

(7) If the new or increased signal proposed in such cases is ultimately authorized, the RSS values of interference to other stations affected will thereafter be calculated by the "50% exclusion" (or 25% exclusion, depending on which study is being performed) method without regard to this alternate method of calculation.

(8) Examples of RSS interference calculations:

(i) Existing interferences:

Station No. 1—1.00 mV/m.
Station No. 2—0.60 mV/m.
Station No. 3—0.59 mV/m.
Station No. 4—0.58 mV/m.

The RSS value from Nos. 1, 2 and 3 is 1.31 mV/m; therefore interference from No. 4 is excluded for it is less than 50% of 1.31 mV/m.

(ii) Station A receives interferences from:

Station No. 1—1.00 mV/m.
Station No. 2—0.60 mV/m.
Station No. 3—0.59 mV/m.

It is proposed to add a new limitation, 0.68 mV/m. This is more than 50% of 1.31 mV/m, the RSS value from Nos. 1, 2 and 3. The RSS value of Station No. 1 and of the proposed station would be 1.21 m/Vm which is more than twice as large as the limitation from Station No. 2 or No. 3. However, under the above provision the new signal and the three existing interferences are nevertheless calculated for purposes of comparative studies, resulting in an RSS value of 1.47 mV/m. However, if the proposed station is ultimately authorized, only No. 1 and the new signal are included in all subsequent calculations for the reason that Nos. 2 and 3 are less than 50% of 1.21 mV/m, the RSS value of the new signal and No. 1.

(iii) Station A receives interferences from:

Station No. 1—1.00 mV/m.
Station No. 2—0.60 mV/m.
Station No. 3—0.59 mV/m.

No. 1 proposes to increase the limitation it imposes on Station A to 1.21 mV/m. Although the limitations from stations Nos. 2 and 3 are less than 50% of the 1.21 mV/m limitation, under the above provision they are nevertheless included for comparative studies, and the RSS limitation is calculated to be 1.47 mV/m. However, if the increase proposed by Station No. 1 is authorized, the RSS value then calculated is 1.21 mV/m because Stations Nos. 2 and 3 are excluded in view of the fact that the limitations they impose are less than 50% of 1.21 mV/m.

Note: The principles demonstrated in the previous examples for the calculation of the 50% exclusion method also apply to calculations using the 25% exclusion method after appropriate adjustment.

(l) Objectionable nighttime interference from a station shall be considered to exist to a station when, at the field strength contour specified in paragraph (q) of this section with respect to the class to which the station belongs, the field strength of an interfering station operating on the same channel or on a first adjacent channel after signal adjustment using the proper protection ratio, exceeds for 10% or more of the time the value of the permissible interfering signal set forth opposite such class in paragraph (q) of this section.

(m) For the purpose of estimating the coverage and the interfering effects of stations in the absence of field strength measurements, use shall be made of Figure 8 of § 73.190, which describes the estimated effective field (for 1 kW power input) of simple vertical omnidirectional antennas of various heights with ground systems having at least 120 quarter-wavelength radials. Certain approximations, based on the curve or other appropriate theory, may be made when other than such antennas and ground systems are employed, but in any event the effective field to be employed shall not be less than the following:

Class of station	Effective field (at 1 km)
All Class A (except Alaskan)	362 mV/m.
Class A (Alaskan), B and D	282 mV/m.
Class C	241 mV/m.

Note (1): When a directional antenna is employed, the radiated signal of a broadcasting station will vary in strength in different directions, possibly being greater than the above values in certain directions and less in other directions depending upon the design and adjustment of the directional antenna system. To determine the interference in any direction, the measured or calculated radiated field (unattenuated field strength at 1 kilometer from the array) must be used in conjunction with the appropriate propagation curves. (See § 73.185 for further discussion and solution of a typical directional antenna case.)

Note (2): For Class B stations in Alaska, Hawaii, Puerto Rico and the U.S. Virgin Islands, 241 mV/m shall be used.

(n) The existence or absence of objectionable groundwave interference from stations on the same or adjacent channels shall be determined by actual measurements made in accordance with the method described in § 73.186, or in the absence of such measurements, by reference to the propagation curves of § 73.184. The existence or absence of objectionable interference due to skywave propagation shall be determined by reference to Formula 2 in § 73.190.

(o) Computation of Skywave Field Strength Values:

(1) Fifty Percent Skywave Field Strength Values (Clear Channel). In computing the fifty percent skywave field strength values of a Class A clear channel station, use shall be made of Formula 1 of § 73.190, entitled "Skywave Field Strength" for 50 percent of the time.

(2) Ten Percent Skywave Field Strength Values. In computing the 10% skywave field strength for stations on a single signal or an RSS basis, Formula 2 in § 73.190 shall be used.

(3) Determination of Angles of Departure. In calculating skywave field strength for stations on all channels, the pertinent vertical angle shall be determined by use of the formula in § 73.190(d).

(p) The distance to any specified groundwave field strength contour for any frequency may be determined from the appropriate curves in § 73.184 entitled "Ground Wave Field Strength vs. Distance."

(q) Normally protected service contours and permissible interference signals for broadcast stations are as follows (for Class A stations, see also paragraph (a) of this section):

Class of station	Class of channel used	Signal strength contour of area protected from objectionable interference [1] (μV/m)		Permissible interfering signal (μV/m)	
		Day [2]	Night	Day [2]	Night [3]
A	Clear	SC 100	SC 500 50% SW AC 500 GW	SC 5 AC 250	SC 25 Ac 250
A (Alaskan)	do	SC 100 AC 500	SC 100 50% SW AC 500 GW	SC5 AC 250	SC 5 AC 250
B	Clear	500	2000 [2]	25 AC 250	25 250
C	Regional Local	500	Not persc.[4]	SC 25	Not presc.
D	Clear Regional	500	Not presc.	SC 25 AC 250	Not presc.

[1] When a station is already limited by interference from other stations to a contour of higher value than that normally protected for its class, this higher value contour shall be the established protection standard for such station. Changes proposed by Class A and B stations shall be required to comply with the following restrictions. Those interferers that contribute to another station's RSS using the 50% exclusion method are required to reduce their contribution to that RSS by 10%. Those lesser interferers that contribute to a station's RSS using the 25% exclusion method but do not contribute to that station's RSS using the 50% exclusion method may make changes not to exceed their present contribution. Interferers not included in a station's RSS using the 25% exclusion method are permitted to increase radiation as long as the 25% exclusion threshold is not equalled or exceeded. In no case will a reduction be required that would result in a contributing value that is below the pertinent value specified in the table. This note does not apply to Class C stations; or to the protection of Class A stations which are normally protected on a single signal, non-RSS basis.

[2] Groundwave.

[3] Skywave field strength for 10 percent or more of the time.

[4] During nighttime hours, Class C stations in the contiguous 48 States may treat all Class B stations assigned to 1230, 1240, 1340, 1400, 1450 and 1490 kHz in Alaska, Hawaii, Puerto Rico and the U.S. Virgin Islands as if they were Class C stations.

Note: SC = Same channel; AC = Adjacent channel; SW = Skywave; GW = Groundwave.

(r) The following table of logarithmic expressions is to be used as required for determining the minimum permissible ratio of the field strength of a desired to an undesired signal. This table shall be used in conjunction with the protected contours specified in paragraph (q) of this section.

Frequency separation of desired to undesired signals (kHz)	Desired Groundwave to:		Desired 50% Skywave to Undesired 10% Skywave (dB)
	Undesired groundwave (dB)	Undesired 10% Skywave (dB)	
0	26	26	26
10	6	6	not presc.

(s) Two stations, one with a frequency twice of the other, should not be assigned in the same groundwave service area unless special precautions are taken to avoid interference from the second harmonic of the station operating on the lower frequency. Additionally, in selecting a frequency, consideration should be given to the fact that occasionally the frequency assignment of two stations in the same area may bear such a relation to the intermediate frequency of some broadcast receivers as to cause "image" interference. However, since this can usually be rectified by readjustment of the intermediate frequency of such receivers, the Commission, in general, will not take this kind of interference into consideration when authorizing stations.

(t) The groundwave service of two stations operating with synchronized carriers and broadcasting identical programs will be subject to some distortion in areas where the signals from the two stations are of comparable strength. For the purpose of estimating coverage of such stations, areas in which the signal ratio is between 1:2 and 2:1 will not be considered as receiving satisfactory service.

Note: Two stations are considered to be operated synchronously when the carriers are maintained within 0.2 Hz of each other and they transmit identical program s.

28. Section 73.183 is amended by removing paragraph (b) and the Note; adding a note after paragraph (a); redesignating paragraphs (c) through (f) as (b) through (e); and revising newly redesignated paragraphs (c) and (e) to read as follows:

§ 73.183 Groundwave signals.

(a) * * *

Note: Groundwave field strength measurements will not be accepted or considered for the purpose of establishing that interference to a station in a foreign country other than Canada, or that the field strength at the border thereof, would be less than indicated by the use of the ground conductivity maps and engineering standards contained in this part and applicable international agreements. Satisfactory groundwave measurements offered for the purpose of demonstrating values of conductivity other than those shown by Figure M3 in problems involving protection of Canadian stations will be considered only if, after review thereof, the appropriate agency of the Canadian government notifies the Commission that they are acceptable for such purpose.

* * * * *

(c) Example of determining interference by the graphs in § 73.184:

It is desired to determine whether objectionable interference exists between a proposed 5 kW Class B station on 990 kWz and an existing 1 kW Class B station on first adjacent channel, 1000 kHz. The distance between the two stations is 260 kilometers and both stations operate nondirectionally with antenna systems that produce a horizontal effective field of 282 in V/m at one kilometer. (See § 73.185 regarding of use of directional antennas.) The ground conductivity at the site of each station and along the intervening terrain is 6 mS/m. The protection to Class B stations during daytime is to the 500 μV/m (0.5 Vm) contour using a 6 dB protection factor. The distance to the 500 μV/m groundwave contour of the 1 kW station is determined by the use of the appropriate curve in § 73.184. Since the curve is plotted for 100 mV/m at a 1 kilometer, to find the distance of the 0.5 mV/m contour of the 1 kw station, it is necessary to determine the distance to the 0.1773 m/Vm contour.

(100×0.5/282-0.1773)

Using the 6 mS/m curve, the estimated radius of the 0.5 mV/m contour is 62.5 kilometers. Subtracting this distance from the distance between the two stations leaves 197.5 kilometers. Using the same propagation curve, the signal from the 5 kW station at this distance is seen to be 0.059 mV/m. Since a protection ratio of 6 dB, desired to undesired signal, applies to stations separated by 10 kHz, the undesired signal could have had a value of up to 0.25 mV/m without causing objectionable interference. For co-channel studies, a desired to undesired signal ratio of no less than 20:1 (26 dB) is required to avoid causing objectionable interference.

* * * * *

(e) Example of the use of the equivalent distance method:

It is desired to determine the distance to the 0.5 mV/m and 0.025 mV/m contours of a station on a frequency of 1000 kHz with an inverse distance field of 100 mV/m at one kilometer being radiated over a path having a conductivity of 10 mS/m for a distance of 20 kilometers, 5 mS/m for the next 30 kilometers and 15 mSm/m thereafter. Using the appropriate curve in § 73.184, Graph 12, at a distance of 20 kilometers on the curve for 10 mS/m, the field strength is found to be 2.84 mV/m. On the 5mS/m curve, the equivalent distance to this field strength is 14.92 kilometers, which is 5.08 (20−14.92 kilometers nearer to the transmitter. Continuing on the propagation curve, the distance to a field strength of 0.5 mV/m is found to be 36.11 kilomteres.

The actual length of the path travelled, however, is 41.19 (36.11+5.08) kilometers. Continuing on this propagation curve to the conductivity change at 44.92 (50.00−5.08) kilometers, the field strength is found to be 0.304 mV/m. On the 15 mS/m propagation curve, the equivalent distance to this field strength is 82.94 kilometers, which changes the effective path length by 38.02 (82.94−44.92) kilometers. Continuing on this propagation curve, the distance to a field strength of 0.025 mV/m is seen to be 224.4 kilometers. The actual length of the path travelled, however, is 191.46 (224.4+5.08−38.02) kilometers.

29. Section 73.184 is amended by revising paragraph (a) and the note following paragraph (b), removing paragraph (c), and revising and redesignating paragraphs (d), (e), and (f) as (c), (d), and (e), to read as follows:

§ 73.184 Groundwave field strength charts.

(a) Graphs 1 to 20 show, for each of 20 frequencies, the computed values of groundwave field strength as a function of groundwave conductivity and distance from the source of radiation. The groundwave field strength is considered to be that part of the vertical component of the electric field which has not been reflected from the ionosphere nor from the troposphere. These 20 families of curves are plotted on log-log graph paper and each is to be used for the range of frequencies shown thereon. Computations are based on a dielectric constant of the ground (referred to air as unity) equal to 15 for land and 80 for sea water and for the ground conductivities (expressed in mS/m) given on the curves. The curves show the variation of the groundwave field strength with distance to be expected for transmission from a vertical antenna at the surface of a uniformly conducting spherical earth with the groundwave constants shown on the curves. The curves are for an antenna power of such efficiency and current distribution that the inverse distance (unattenuated) field is 100 mV/m at 1 kilometer. The curves are valid for distances that are large compared to the dimensions of the antenna for other than short vertical antennas.

(b)* * *

Note: The computed values of field strength versus distance used to plot Graphs 1 to 20 are available in tabular form. For information on obtaining copies of these tabulations call or write the Consumer Affairs Office, Federal Communications Commission, Washington, DC 20554, (202) 632-7000.

(c) Provided the value of the dielectric constant is near 15, the ground conductivity curves of Graphs 1 to 20 may be compared with actual field strength measurement data to determine the appropriate values of the ground conductivity and the inverse distance field strength at 1 kilometer. This is accomplished by plotting the measured field strengths on transparent log-log graph paper similar to that used for Graphs 1 to 20 and superimposing the plotted graph over the Graph corresponding to the frequency of the station measured. The plotted graph is then shifted vertically until the plotted measurement data is best aligned with one of the conductivity curves on the Graph; the intersection of the inverse distance line on the Graph with the 1 kilometer abscissa on the plotted graph determines the inverse distance field strength at 1 kilometer. For other values of dielectric constant, the following procedure may be used to determine the dielectric constant on the ground, the ground conductivity and the inverse distance field strength at 1 kilometer. Graph 21 gives the relative values of groundwave field strength over a plane earth as a function of the numerical distance p and phase angle b. On graph paper with coordinates similar to those of Graph 21, plot the measured values of field strength as ordinates versus the corresponding distances from the antenna in kilometers as abscissae. The data should be plotted only for distances greater than one wavelength (or, when this is greater, five times the vertical height of the antenna in the case of a nondirectional antenna or 10 times the spacing between the elements of a directional antenna) and for distances less than $80f^{1/3}$MHz kilometers (i.e., 80 kilometers at 1 MHz). Then, using a light box, place the plotted graph over Graph 21 and shift the plotted graph vertically and horizontally (making sure that the vertical lines on both sheets are parallel) until the best fit with the data is obtained with one of the curves on Graph 21. When the two sheets are properly lined up, the value of the field strength corresponding to the intersection of the inverse distance line of Graph 21 with the 1 kilometer abscissa on the data sheet is the inverse distance field strength at 1 kilometer, and the values of the numerical distance at 1 kilometer, p_1, and of b are also determined. Knowing the values of b and p_1 (the numerical distance at one kilometer), we may substitute in the following approximate values of the ground conductivity and dielectric constant.

$$\chi \cong \frac{\pi}{p}\left(\frac{R}{\lambda}\right)_1 \cos b \qquad \text{(Eq. 1)}$$

$(R/\lambda)_1$ = Number of wavelengths in 1 kilometer.

* * * * *

f_{MHz} = frequency expressed in megahertz.

$$\epsilon \cong \chi \tan b - 1 \qquad \text{(Eq. 3)}$$

ϵ = dielectric constant on the ground referred to air as unity.

First solve for χ by substituting the known values of p_1, $(R/\lambda)_1$, and cos b in equation (1). Equation (2) may then be solved for δ and equation (3) for ϵ. At distances greater than $80/f^{1/3}$ MHz kilometers the curves of Graph 21 do not give the correct relative values of field strength since the curvature of the earth weakens the field more rapidly than these plane earth curves would indicate. Thus, no attempt should be made to fit experimental data to these curves at the larger distances.

Note: For other values of dielectric constant, use can be made of the computer program which was employed by the FCC in generating the curves in Graphs 1 to 20. For information on obtaining a printout of this program, call or write the Consumer Affairs Office, Federal Communications Commission, Washington, DC 200554, (202) 632-7000.

(d) At sufficiently short distances (less than 55 kilometers at AM broadcast frequencies), such that the curvature of the earth does not introduce an additional attenuation of the waves, the curves of Graph 21 may be used to determine the groundwave field strength of transmitting and receiving antennas at the surface of the earth for any radiated power, frequency, or set of ground constants. First, trace the straight inverse distance line corresponding to the power radiated on transparent log-log graph paper similar to that of Graph 21, labelling the ordinates of the chart in terms of field strength, and the abscissae in terms of distance. Next, using the formulas given on Graph 21, calculate the value of the numerical distance, p, at 1 kilometer, and the value of b. Then superimpose the log-log graph paper over Graph 21, shifting it vertically until both inverse distance lines coincide and shifting it horizontally until the numerical distance at 1 kilometer on Graph 21 coincides with 1 kilometer on the log-log graph paper. The curve of Graph 21 corresponding to the calculated value of b is then traced on the log-log graph paper giving the field strength versus distance in kilometers.

(e) This paragraph consists of the following Graphs 1 to 20 and 21.

Note: The referenced graphs are not published in the CFR, nor will they be included in the Commission's automated rules system. For information on obtaining copies of the graphs call or write the Consumer Affairs Office, Federal Communications Commission, Washington, DC 20554, Telephone: (202) 632-7000.

30. Section 73.185 is amended by revising paragraph (b), by removing paragraph (c), by revising and redesignating paragraphs (d) and (e) as (c) and (d), by removing paragraphs (i) and (j), and revising and redesignating paragraphs (h) and (k) as (e) and (f), and by revising newly redesignated paragraph (f)(2) to read as follows:

§ 73.185 Computation of interfering signal.

* * * * *

(b) For skywave signals from stations operating on all channels, interference shall be determined from the appropriate formulas and Figure 6a contained in § 73.190.

(c) The formulas in § 73.190(d) depicted in Figure 6a of § 73.190, entitled "Angles of Departure versus Transmission Range" are to be used in determining the angles in the vertical pattern of the antenna of an interfering station to be considered as pertinent to transmission by one reflection. To provide for variation in the pertinent vertical angle due to variations of ionosphere height and ionosphere scattering, the curves 2 and 3 indicate the upper and lower angles within which the radiated field is to be considered. The maximum value of field strength occurring between these angles shall be used to determine the multiplying factor to apply to the 10 percent skywave field intensity value determined from Formula 2 in § 73.190. The multiplying factor is found by dividing the maximum radiation between the pertinent angles by 100 mV/m.

(d) Example of the use of skywave curves and formulas: Assume a proposed new Class B station from which interference may be expected is located at a distance of 724 kilometers from a licensed Class B station. The proposed station specifies geographic coordinates of 40°00'00"N and 100° 00'00"W and the station to be protected is located at an azimuth of 45° true at geographic coordinates of 44°26'05"N and 93°32'54"W. The critical angles of radiation as determined from Figure 6a of § 73.190 for use with Class B stations are 9.6° and 16.6°. If the vertical pattern of the antenna of the proposed station in the direction of the existing station is such that, between the angles of 9.6° and

16.6° above the horizon the maximum radiation is 260 mV/m at one kilometer, the value of the 50% field, as derived from Formula 1 of § 73.190, is 0.06217 mV/m at the location of the existing station. To obtain the value of the 10% field, the 50% value must be adjusted by a factor derived from Formula 2 of § 73.190. The value in this case is 8.42 dB. Thus, the 10% field is 0.1616 mV/m. Using this in conjunction with the co-channel protection ratio of 26 dB, the resultant nighttime limit from the proposed station to the licensed station is 3.232 mV/m.

(e) In the case of an antenna which is non-directional in the horizontal plane, the vertical distribution of the relative fields should be computed pursuant to § 73.160. In the case of an antenna which is directional in the horizontal plane, the vertical pattern in the great circle direction toward the point of reception in question must first be calculated. In cases where the radiation in the vertical plane, at the pertinent azimuth, contains a large lobe at a higher angle than the pertinent angle for one reflection, the method of calculating interference will not be restricted to that just described; each such case will be considered on the basis of the best knowledge available.

(f) In performing calculations to determine permissible radiation from stations operating presunrise or postsunset in accordance with § 73.99, calculated diurnal factors will be multiplied by the values of skywave field strength for such stations obtained from Formula 1 or 2 of § 73.190.

(1) * * *

(2) Constants used in calculating diurnal factors for the presunrise and postsunset periods are contained in paragraphs (f)(2) (i) and (ii) of this section respectively. The columns labeled T_{mp} represent the number of hours before and after sunrise and sunset at the path midpoint.

* * * * *

31. Section 73.187 is amended by revising paragraphs (a) and (b) to read as follows:

§ 73.187 Limitation on daytime radiation.

(a)(1) Except as otherwise provided in paragraphs (a)(2) and (3) of this section, no authorization will be granted for a Class B or Class D station on a frequency specified in § 73.25 if the proposed operation would radiate during the period of critical hours (the two hours after local sunrise and the two hours before local sunset) toward any point on the 0.1 mV/m contour of a co-channel U.S. Class A station, at or below the pertinent vertical angle determined from Curve 2 of Figure 6a of § 73.190, values in excess of those obtained as provided in paragraph (b) of this section.

(2) The limitation set forth in paragraph (a)(1) of this section shall not apply in the following cases:

(i) Any Class B or Class D operation authorized before November 30, 1959; or

(ii) For Class B and Class D stations authorized before November 30, 1959, subsequent changes of facilities which do not involve a change in frequency, an increase in radiation toward any point on the 0.1 mV/m contour of a co-channel U.S. Class A station, or the move of transmitter site materially closer to the 0.1 mV/m contour of such Class A station.

(3) A Class B or Class D station authorized before November 30, 1959, and subsequently authorized to increase daytime radiation in any direction toward the 0.1 mV/m contour of a co-channel U.S. Class A station (without a change in frequency or a move of transmitter site materially closer to such contour), may not, during the two hours after local sunrise or the two hours before local sunset, radiate in such directions a value exceeding the higher of:

(i) The value radiated in such directions with facilities last authorized before November 30, 1959, or

(ii) The limitation specified in paragraph (a)(1) of this section.

(b) To obtain the maximum permissible radiation for a Class B or Class D station on a given frequency from 640 through 990 kHz, multiply the radiation value obtained for the given distance and azimuth from the 500 kHz chart (Figure 9 of § 73.190) by the appropriate interpolation factor shown in the K_{500} column of paragraph (c) of this section; and multiply the radiation value obtained for the given distance and azimuth from the 1000 kHz chart (Figure 10 of § 73.190) by the appropriate interpolation factor shown in the K_{1000} column of paragraph (c) of this section. Add the two products thus obtained; the result is the maximum radiation value applicable to the Class B or Class D station in the pertinent directions. For frequencies from 1010 to 1580 kHz, obtain in a similar manner the proper radiation values from the 1000 and 1600 kHz charts (Figures 10 and 11 of § 73.190), multiply each of these values by the appropriate interpolation factors in the K'_{1000} and K'_{1600} columns in paragraph (c) of this section, and add the products.

* * * * *

32. Section 73.189 is amended by revising paragraphs (b)(2)(i), (b)(2)((ii), (b)(2)(ii), (b)(3), and (b)(6), to read as follows:

§ 73.189 Minimum antenna heights or field strength requirements.

* * * * *

(b) * * *

(2) * * *

(i) Class C stations, and stations in Alaska, Hawaii, Puerto Rico and the U.S. Virgin Islands on 1230, 1240, 1340, 1400, 1450 and 1490 kHz that were formerly Class C and were redesignated as Class B pursuant to § 73.26(b), 45 meters or a minimum effective field strength of 241 mV/m for 1 kW (121 mV/m for 0.25 kW). (This height applies to a Class C station on a local channel only. Curve A shall apply to any Class C stations in the 48 conterminous States that are assigned to Regional channels.)

(ii) Class A (Alaska), Class B and Class D stations other than those covered in § 73.189(b)(2)(i), a minimum effective field strength of 282 mV/m for 1 kW.

(iii) Class A stations, a minimum effective field strength of 362 mV/m for 1 kW.

(3) The heights given on the graph for the antenna apply regardless of whether the antenna is located on the ground or on a building. Except for the reduction of shadows, locating the antenna on a building does not necessarily increase the efficiency and where the height of the building is in the order of a quarter wave the efficiency may be materially reduced.

* * * * *

(6) The main element or elements of a directional antenna system shall meet the above minimum requirements with respect to height or effective field strength. No directional antenna system will be approved which is so designed that the effective field of the array is less than the minimum prescribed for the class of station concerned, or in case of a Class A station less than 90 percent of the ground wave field which would be obtained from a perfect antenna of the height specified by Figure 7 of § 73.190 for operation on frequencies below 1000 kHz, and in the case of a Class B or Class D station less than 90 percent of the ground wave field which would be obtained from a perfect antenna of the height specified by Figure 7 of § 73.190 for operation on frequencies below 750 kHz.

33. Section 73.190 is amended by revising Figures 7 and 8 to reflect the use of metric units and by revising paragraphs (a), (b), (c), and (e) to read as follows:

§ 73.190 Engineering charts and related formulas.

(a) This section consists of the following Figures: 2, r3, 5, 6a, 7, 8, 9, 10, 11, 12, and 13. Additionally, formulas that are directly related to graphs are included.

(b) Formula 1 is used for calculation of 50% skywave field strength values.

Formula 1. Skywave field strength, 50% of the time (at SS+6):

The skywave field strength, $F_c(50)$, for a characteristic field strength of 100 mV/m at 1 km is given by:

$$F_c(50) = (97.5 - 20\log D) - (2\pi + 4.95\tan^2\phi_M)\sqrt{\left(\frac{D}{1000}\right)} \quad dB(\mu V/m) \quad \text{(Eq. 1)}$$

The slant distance, D, is given by:

$$D = \sqrt{40{,}000 + d^2} \quad km \quad \text{(Eq. 2)}$$

The geomagnetic latitude of the midpoint of the path, Φ_M, is given by:

$$\Phi_M = \arcsin[\sin a_M \sin 78.5° + \cos a_M \cos 78.5° \cos(69 + b_M)] \quad \text{degrees} \quad \text{(Eq. 3)}$$

The short great-circle path distance, d, is given by:

$$d = 111.18 d^\circ \quad km \quad \text{(Eq. 4)}$$

Where:

$$d^\circ = \arccos[\sin a_T \sin a_R + \cos a_T \cos a_R \cos(b_R - b_T)] \quad \text{degrees} \quad \text{(Eq.5)}$$

Where:

a_T is the geographic latitude of the transmitting terminal (degrees)

a_R is the geographic latitude of the receiving terminal (degrees)

b_T is the geographic longitude of the transmitting terminal (degrees)

b_R is the geographic longitude of the receiving terminal (degrees)

a_M is the geographic latitude of the midpoint of the great-circle path (degrees) and is given by:

b_M is the geographic longitude of the midpoint of the great-circle path (degrees) and is given by:

$$a_M = 90 - \arccos\left[\sin a_R \cos\left(\frac{d^\circ}{2}\right) + \cos a_R \sin\left(\frac{d^\circ}{2}\right)\left(\frac{\sin a_T - \sin a_R \cos d^\circ}{\cos a_R \sin d^\circ}\right)\right] \quad \text{(Eq. 6)}$$

$$b_M = b_R + k\left[\arccos\left(\frac{\cos\left(\frac{d^\circ}{2}\right) - \sin a_R \sin a_M}{\cos a_R \cos a_M}\right)\right] \quad \text{(Eq. 7)}$$

Note (1): If $|\Phi_M|$ is greater than 60 degrees, equation (1) is evaluated for $|\Phi_M| = 60$ degrees.

Note (2): North and east are considered positive; south and west negative.

Note (3): In equation (7), $k = -1$ for west to east paths (i.e., $b_R > b_T$), otherwise $k = 1$.

(c) Formula 2 is used for calculation of 10% skywave field strength values.

Formula 2. Skywave field strength, 10% of the time (at SS+6):

The skywave field strength, $F_c(10)$, is given by:

$$F_c(10) = F_c(50) + \Delta \quad dB(\mu V/m)$$

Where:

$\Delta = 6$ when $|\Phi_M| < 40$

$\Delta = 0.2\,|\Phi_M| - 2$ when $40 \leq |\Phi_M| \leq 60$

$\Delta = 10$ when $|\Phi_M| > 60$

* * * * *

(e) In the event of disagreement between computed values using the formulas shown above and values obtained directly from the figures, the computed values will control.

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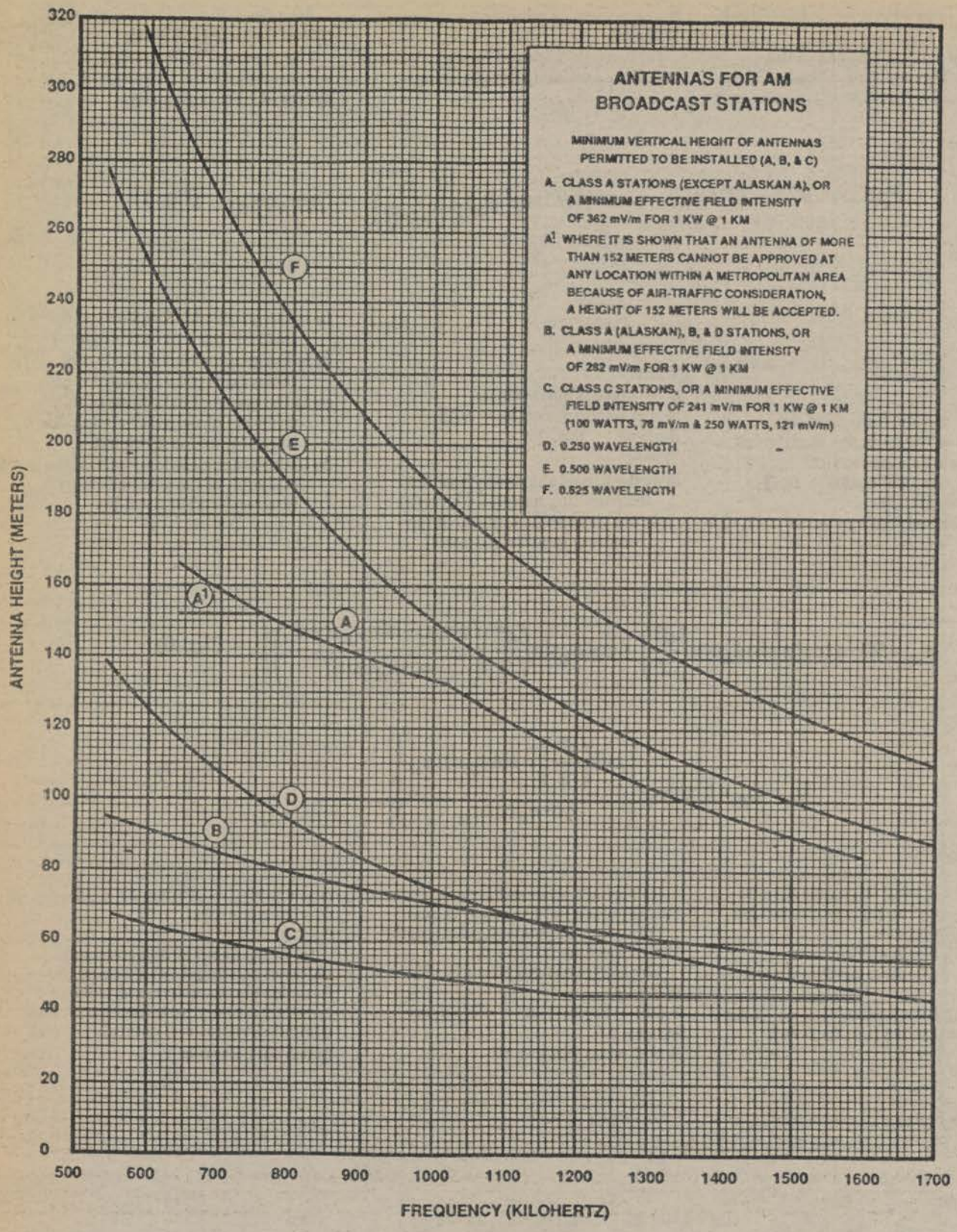
ANTENNAS FOR AM
BROADCAST STATIONS
MINIMUM VERTICAL HEIGHT OF ANTENNAS PERMITTED TO BE INSTALLED (A, B, & C)
A. CLASS A STATIONS (EXCEPT ALASKAN A), OR A MINIMUM EFFECTIVE FIELD INTENSITY OF 362 mV/m FOR 1 KW @ 1 KM
A1. WHERE IT IS SHOWN THAT AN ANTENNA OF MORE THAN 152 METERS CANNOT BE APPROVED AT ANY LOCATION WITHIN A METROPOLITAN AREA BECAUSE OF AIR-TRAFFIC CONSIDERATION, A HEIGHT OF 152 METERS WILL BE ACCEPTED.
B. CLASS A (ALASKAN), B, & D STATIONS, OR A MINIMUM EFFECTIVE FIELD INTENSITY OF 282 mV/m FOR 1 KW @ 1 KM
C. CLASS C STATIONS, OR A MINIMUM EFFECTIVE FIELD INTENSITY OF 241 mV/m FOR 1 KW @ 1 KM (100 WATTS, 76 mV/m & 250 WATTS, 121 mV/m)
D. 0.250 WAVELENGTH
E. 0.500 WAVELENGTH
F. 0.625 WAVELENGTH
ANTENNA HEIGHT (METERS)
320
300
280
260
240
220
200
180
160
140
120
100
80
60
40
20
0
F
E
A1
A
D
B
C
500
600
700
800
900
1000
1100
1200
1300
1400
1500
1600
1700
FREQUENCY (KILOHERTZ)

Figure 7

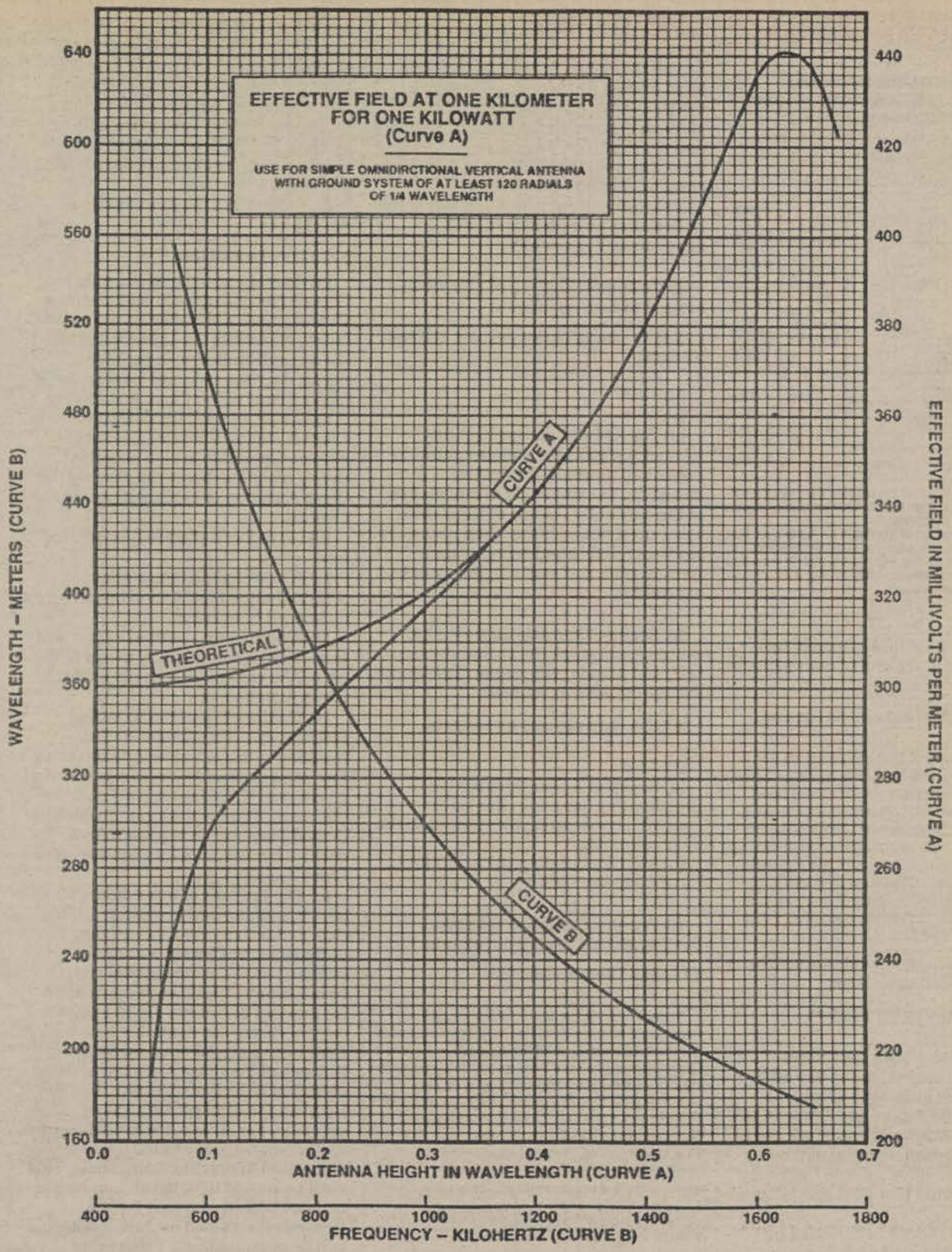

Figure 8

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34. Section 73.1030 is amended by revising the table in paragraph (b) to read as follows:

§ 73.1030 Notifications concerning interference to radio astronomy, research and receiving installations.

* * * * *

(b) * * *

Frequency range	Field strength in authorized bandwidth of service (mV/m)	Power flux density in authorizd bandwidth of service (dBW/m²) [1]
Below 540 kHz	10	−65.8
540 to 1700 kHz	20	−59.8
1.7 to 470 MHz	10	[2] −65.8
470 to 890 MHz	30	[2] −56.2
Above 890 MHz	1	[2] −85.8

[1] Equivalent values of power flux density are calculated assuming free space characteristic impedance of 376.7=120 ohms.

[2] Space stations shall conform to the power flux density limits at the earth's surface specified in appropriate parts of the FCC rules, but in no case should exceed the above levels in any 4 kHz band for all angles of arrival.

* * * * *

35. Section 73.1125 is amended by adding a note at the end of the section to read as follows:

§ 73.1125 Station main studio location.

* * * * *

Note: AM stations that simulcast on a frequency in the 535–1605 kHz band and on a frequency in the 1605–1705 kHz band need only have the studio be located within the 5 mV/m contour of the lower band operation during the term of the simultaneous operating authority. Upon termination of the 535–1605 kHz band portion of the dual frequency operation, the above rule shall then become applicable to the remaining operation in the 1605–1705 kHz band.

36. A new paragraph (c) is added to § 73.1150 to read as follows:

§ 73.1150 Transferring a station.

* * * * *

(c) Licensees and/or permittees authorized to operate in the 535–1605 kHz and in the 1605–1705 kHz band pursuant to the Report and Order in MM Docket No. 87–267 will not be permitted to assign or transfer control of the license or permit for a single frequency during the period that joint operation is authorized.

37. Section 73.1201 is amended by revising (c)(2) to read as follows:

§ 73.1201 Station identification.

* * * * *

(c) * * *

(2) *Simultaneous AM (535–1605 kHz) and AM (1605–1705 kHz broadcasts.* If the same licensee operates an AM broadcast station in the 535–1605 kHz band and an AM broadcast station in the 1605–1705 kHz band with both stations licensed to the same community and simultaneously broadcasts the same programs over the facilities of both such stations, station identification announcements may be made jointly for both stations for periods of such simultaneous operations.

* * * * *

38 Paragraph (b)(1)(ii) of § 73.1570 is revised to read as follows:

§ 73.1570 Modulation levels: AM, FM, and TV aural.

* * * * *

(b) * * *

(1) * * *

(ii) For AM stations transmitting telemetry signals for remote control or automatic transmission system operation, the amplitude of modulation of the carrier by the use of subaudible tones must not be higher than necessary to effect reliable and accurate data transmission and may not, in any case, exceed 6%.

* * * * *

39. Section 73.1650 is amended by revising paragraph (b)(2), introductory text, and adding paragraphs (b)(2)(i) and (b)(2)(ii) to read as follows:

§ 73.1650 International agreements.

* * * * *

(b) * * *

(2) Regional Agreements for the Broadcasting Service in Region 2:

(i) MF Broadcasting 535–1605 kHz, Rio de Janeiro, 1981.

(ii) MF Broadcasting 1605–1705 kHz, Rio de Janeiro, 1988.

* * * * *

40. A note is added at the end of Section 73.1665 to read as follows:

§ 73.1665 Main transmitters.

* * * * *

Note: Pending the availability of AM broadcast transmitters that are type-accepted for use in the 1605–1705 kHz band, transmitters that are type-accepted for use in the 535–1605 kHz band as shown on the FCC's Radio Equipment List may be utilized in the 1605–1705 kHz band if it is shown that the requirements of § 73.44 have been met. FCC approval of the manufacturer's application for type-acceptance will supersede the applicability of this note.

41. Paragraph (c) in § 73.1705 is revised to read as follows:

§ 73.1705 Time of operation.

* * * * *

(c) AM stations in the 535–1705 kHz band will be licensed for unlimited time. In the 535–1605 kHz band, stations that apply for share time and specified hours operations may also be licensed. AM stations licensed to operate daytime-only and limited-time may continue to do so; however, no new such stations will be authorized, except for fulltime stations that reduce operating hours to daytime-only for interference reduction purposes.

42. Section 73.1725 is revised to read as follows:

§ 73.1725 Limited time.

(a) Operation is applicable only to Class B (secondary) AM stations on a clear channel with facilities authorized before November 30, 1959. Operation of the secondary station is permitted during daytime and until local sunset if located west of the Class A station on the channel, or until local sunset at the Class A station if located east of that station. Operation is also permitted during nighttime hours not used by the Class A station or other stations on the channel.

(b) No authorization will be granted for:

(1) A new limited time station;

(2) A limited time station operating on a changed frequency;

(3) A limited time station with a new transmitter site materially closer to the 0.1 mV/m contour of a co-channel U.S. Class A station; or

(4) Modification of the operating facilities of a limited time station resulting in increased radiation toward any point on the 0.1 mV/m contour of a co-channel U.S. Class A station during the hours after local sunset in which the limited time station is permitted to operate by reason of location east of the Class A station.

(c) The licensee of a secondary station which is authorized to operate limited time and which may resume operation at the time the Class A station (or stations) on the same channel ceases operation shall, with each application for renewal of license, file in triplicate a copy of its regular operating schedule. It shall bear a signed notation by the licensee of the Class A station of its objection or lack of objection thereto. Upon approval of such operating schedule, the FCC will affix its file mark and return one copy to the licensee authorized to operate limited time. This shall be posted with the station license and considered as a part thereof. Departure from said operating schedule will be permitted only pursuant to § 73.1715 (Share time).

43. Section 73.1740 is amended by revising paragraph (a)(1)(i) to read as follows:

§ 73.1740 Minimum operating schedule.

(a) * * *

(1) * * *

(i) Class D stations which have been authorized nighttime operations need comply only with the minimum requirements for operation between 6 a.m. and 6 p.m., local time.

* * * * *

44. Paragraph (a) of § 73.3516 is revised to read as follows:

§ 73.3516 Specification of facilities.

(a) An application for facilities in the AM, FM, or TV broadcast services or low power TV service shall be limited to one frequency, or channel, and no application will be accepted for filing if it requests an alternate frequency or channel. Applications specifying split frequency AM operations using one frequency during daytime hours complemented by a different frequency during nighttime hours will not be accepted for filing.

* * * * *

45. New paragraphs (c) and (d) and Notes 1 and 2 are added to § 73.3517 to read as follows:

§ 73.3517 Contingent applications.

* * * * *

(c) Upon payment of the filing fees prescribed in § 1.1111 of this chapter, the Commission will accept two or more applications filed by existing AM licensees for modification of facilities that are contingent upon granting of both, if granting such contingent applications will reduce interference to one or more AM stations or will otherwise increase the area of interference-free service. The applications must state that they are filed pursuant to an interference reduction arrangement and must cross-reference all other contingent applications.

(d) Modified proposals curing conflicts between mutually exclusive clusters of applications filed in accordance with paragraphs (c) of this section will be accepted for 60 days following issuance of a public notice identifying such conflicts.

Note 1: No application to move to a frequency in the 1605–1705 kHz band may be part of any package of contingent applications associated with a voluntary agreement.

Note 2: In cases where no modified proposal is filed pursuant to paragraph (d) of this section, the Commission will grant the application resulting in the greatest net interference reduction.

46. Paragraph (i) in § 73.3550 is revised to read as follows:

§ 73.3550 Requests for new or modified call sign assignments.

* * * * *

(i) Stations in different broadcast services (or operating jointly in the 535–1605 kHz band and in the 1605–1705 kHz band) which are under common control may request that their call signs be conformed by the assignment of the same basic call sign if that call sign is not being used by a non-commonly owned station. For the purposes of this paragraph, 50% or greater common ownership shall constitute a prima facie showing of common control.

* * * * *

47. Section 73.3555 is amended by revising Note 4 and adding new Notes 8, 9 and 10 to read as follows:

§ 73.3555 Multiple ownership.

* * * * *

Note 4: Paragraphs (a) through (d) of this section will not be applied to require divestiture, by any licensee, of existing facilities, and will not apply to applications for increased power for Class C stations, to applications for assignment of license or transfer of control filed in accordance with § 73.3540(f) or § 73.3541(b) of this part, or to applications for assignment of license or transfer of control to heirs or legatees by will or intestacy if no new or increased overlap would be created between commonly owned, operated, or controlled broadcast stations in the same service and if no new encompassment of communities proscribed in paragraphs (b) and (c) of this section as to commonly owned, operated, or controlled broadcast stations or daily newspapers would result. Said paragraphs will apply to all applications for new stations, to all other applications for assignment or transfer, and to all applications for major changes in existing stations except major changes that will result in overlap of contours of broadcast stations in the same service with each other no greater than already existing. (The resulting areas of overlap of contours of such broadcast stations with each other in such major change cases may consist partly or entirely of new terrain. However, if the population in the resulting overlap areas substantially exceeds that in the previously overlap areas, the Commission will not grant the application if it finds that to do so would be against the public interest, convenience, or necessity.) Commonly owned, operated, or controlled broadcast stations, with overlapping contours or with community-encompassing contours prohibited by this section may not be assigned or transferred to a single person, group, or entity, except as provided above in this note. If a commonly owned, operated, or controlled broadcast station and daily newspaper fall within the encompassing proscription of this section, the station may not be assigned to a single person, group or entity if the newspaper is being simultaneously sold to such single person, group or entity.

* * * * *

Note 8: Paragraph (a)(1) of this section will not apply to an application for an AM station license in the 535–1605 kHz band where grant of such application will result in the overlap of 5 mV/m groundwave contours of the proposed station and that of another AM station in the 535–1605 kHz band that is commonly owned, operated or controlled if the applicant shows that a significant reduction in interference to adjacent or co-channel stations would accompany such common ownership. Such AM overlap cases will be considered on a case-by-case basis to determine whether common ownership, operation or control of the stations in question would be in the public interest. Applicants in such cases must submit a contingent application for the major or minor facilities change needed to achieve the interference reduction along with the application which seeks to create the 5 mV/m overlap situation.

Note 9: Paragraph (a)(1) of this section will not apply to an application for an AM station license in the 1605–1705 kHz band where grant of such application will result in the overlap of the 5 mV/m groundwave contours of the proposed station and that of another AM station in the 535–1605 kHz band that is commonly owned, operated or controlled. Paragraphs (d)(1)(i) and (d)(1)(ii) of this section will not apply to an application for an AM station license in the 1605–1705 kHz band by an entity that owns, operates, controls or has a cognizable interest in AM radio stations in the 535–1605 kHz band.

Note 10: Authority for joint ownership granted pursuant to Note 9 will expire at 3 a.m. local time on the fifth anniversary of the date of issuance of a construction permit for an AM radio station in the 1605–1705 kHz band.

48. Section 73.3564 is amended by adding a new paragraph (e) to read as follows:

§ 73.3564 Acceptance of applications.

* * * * *

(e) Applications for operation in the 1605–1705 kHz band will be accepted only if filed pursuant to the terms of § 73.30(b).

§ 73.3570 [Redesignated as § 73.23]

49. Section 73.3570 is redesignated as § 73.23.

50. Section 73.3571 is amended by revising paragraphs (a), and (a)(1), by adding a new paragraph (a)(3), by removing paragraphs (d)(1) and (e), by revising and redesignating paragraphs (d)(2), (d)(3) and (d)(4) as (d)(1), (d)(2) and (d)(3), by redesignating paragraphs (f) through (i) as (e) through (h) and revising newly redesignated paragraphs (f) and (h), by redesignating paragraphs (j)(1), (j)(2), (j)(3), and (j)(4) as (i)(1), (i)(2), (i)(3), and (i)(4) and revising the text of newly redesignated paragraph (i)(1), and be redesignating paragraphs (k) and (l) as paragraphs (j) and (k) to read as follows:

§ 73.3571 Processing of AM broadcast station applications.

(a) Applications for AM broadcast facilities are divided into three groups.

(1) In the first group are applications for new stations or for major changes in the facilities of authorized stations. A major change is any increase in power except where accompanied by a complimentary reduction of antenna efficiency which leads to the same amount, or less, radiation in all directions (in the horizontal and vertical planes when skywave propagation is involved, and in the horizontal plane only for daytime considerations), relative to the presently authorized radiation levels, or any change in frequency, hours of operation, or community of license. However, the FCC may, within 15 days after the acceptance for filing of any other application for modification of facilities, advise the applicant that such application is considered to be one for a major change and therefore is subject to the provisions of §§ 73.3580 and 1.1111 of this chapter pertaining to major changes.

(2) * * *

(3) The third group consists of applications for operation in the 1605–1705 kHz band which are filed subsequent to Commission notification that allotments have been awarded to petitioners under the procedure specified in § 73.30.

* * * * *

(d) Applications proposing to increase the power of an AM station are subject to the following requirements:

(1) In order to be acceptable for filing, any application which does not involve a change in site must propose at least a 20% increase in the station's nominal power.

(2) Applications involving a change in site are not subject to the requirements in paragraph (d)(1) of this section.

(3) Applications for nighttime power increases for Class D stations are not subject to the requirements of this section and will be processed as minor changes.

* * * * *

(f) Applications for change of license to change hours of operation of a Class C station, to decrease hours of operation of any other class of station, or to change station location involving no change in transmitter site will be considered without reference to the processing line.

* * * * *

(h) When an application which has been designated for hearing has been removed from the hearing docket, the application will be returned to its proper position (as determined by the file number) in the processing line. Whether or not a new file number will be assigned will be determined pursuant to paragraph (i) of this section, after the application has been removed from the hearing docket.

(i)(1) A new file number will be assigned to an application for a new station, or for major changes in the facilities of an authorized station, when it is amended to change frequency, to increase power, to increase hours of operation, or to change station location. Any other amendment modifying the engineering proposal, except an amendment regarding the type of equipment specified, will also result in the assignment of a new file number unless such amendment is accompanied by a complete engineering study showing that the amendments would not involve new or increased interference problems with existing stations or other applications pending at the time the amendment is filed. If, after submission and acceptance of such an engineering amendment, subsequent examination indicates new or increased interference problems within either existing stations or other applications pending at the time the amendment was received at the FCC, the application will then be assigned a new file number and placed in the processing line according to the numerical sequence of the new file number.

* * * * *

51. New paragraph (c) is added to § 73.3598 to read as follows:

§ 73.3598 Period of construction.

* * * * *

(c) An existing AM station operating in the 535–1605 kHz band that receives a conditional permit to operate in the 1605–1705 kHz band; such permit shall specify a period of not more than 18 months from the date of issuance of the original construction permit within which construction shall be completed and application for license filed.

§ 73.4160 [Removed]

52. Section 73.4160 is removed.

53. Section 73.4255 is revised to read as follows:

§ 73.4255 Tax certificates: Issuance of.

(a) See Public Notice, FCC 76–337, dated April 21, 1976. 59 FCC 2d, 91; 41 FR 17605, April 27, 1976.

(b) See Report and Order MM Docket 87–267, FCC 91–303 adopted, September 26, 1991.

Part 90 of title 47 of the CFR is amended as follows:

54. The authority citation for part 90 continues to read as follows:

Authority: 47 U.S.C. 154 and 303.

55. Section 90.17(b) is amended by removing the entry for 1610 kHz and adding the entry for 540 through 1700 kHz to the Table of Frequencies to read as follows:

§ 90.17 Local Government Radio Service.

* * * * *

(b) * * *

Local government radio service frequency table

Frequency or band (kHz)	Class of station(s)	Limitations
530	Base (T.I.S.)	23
540–1700	do	23
2726	Base or Mobile	1

* * * * *

56. Section 90.242 is amended by revising paragraph (a) introductory text, the first sentence of (a)(2)(i), and (a)(2)(ii) to read as follows:

§ 90.242 Travelers information stations.

(a) The frequencies 530 through 1700 kHz in 10 kHz increments may be assigned to the Local Government Radio Service for the operation of Travelers Information Stations subject to the following conditions and limitations.

* * * * *

(2) * * *

(i) A statement certifying that the transmitting site of the Travelers Information Station will be located at least 15 km (9.3 miles) measured orthogonally outside the measured 0.5 mV/m daytime contour (0.1 mV/m for Class A stations) of any AM broadcast station operating on a first adjacent channel or at least 130 km (80.6 miles) outside the measured 0.5 mV/m daytime contour (0.1 mV/m for Class A stations) of any AM broadcast station operating on the same channel, or, if nighttime operation is proposed, outside the theoretical 0.5 mV/m–50% nighttime skywave contour of a U.S. Class A station. * * *

(ii) In consideration of possible cross-modulation and inter-modulation interference effects which may result from the operation of a Travelers Information Station in the vicinity of an AM broadcast station on the second or third adjacent channel, the applicant shall certify that he has considered these possible interference effects and, to the best of his knowledge, does not foresee interference occurring to broadcast stations operating on second or third adjacent channels.

* * * * *

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Part III

Environmental Protection Agency

40 CFR Part 131

Amendments to the Water Quality Standards Regulation That Pertain to Standards on Indian Reservations; Final Rule

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 131

[WH-FRL-4038-8]

Amendments to the Water Quality Standards Regulation That Pertain to Standards on Indian Reservations

AGENCY: Environmental Protection Agency.

ACTION: Final rule.

SUMMARY: This rule amends the water quality standards regulation by adding: (1) The procedures by which an Indian Tribe may qualify for treatment as a State for purposes of the Clean Water Act section 303 water quality standards and section 401 certification programs, and (2) a mechanism to resolve unreasonable consequences that may arise from Indian Tribes and States adopting differing water quality standards on common bodies of water.

EFFECTIVE DATE: The rule shall be effective January 13, 1992.

ADDRESSES: The public may inspect the administrative record for this rulemaking and all comments received on the proposed regulation at the Environmental Protection Agency, Standards and Applied Science Division, Office of Science and Technology, room 919 East Tower, 401 M Street, SW., Washington, DC, between the hours of 8 a.m. and 4:30 p.m. on business days. A reasonable fee will be charged for copying. Inquiries can be made by calling 202–260–1315.

FOR FURTHER INFORMATION CONTACT: David K. Sabock, Environmental Protection Agency, Standards and Applied Science Division, (WH–585), 401 M Street, SW., Washington, DC, 20460, (202) 260–1318.

SUPPLEMENTARY INFORMATION: Information in this preamble is organized as follows:

A. Background

Section 303(c) of the Clean Water Act (33 U.S.C. 1313(c)) requires the States to develop, review, and revise water quality standards for all surface waters of the United States. The Environmental Protection Agency's (EPA's) implementing regulations (40 CFR part 131) require that, at a minimum, such standards include designated water uses, in-stream criteria to protect such uses, and an antidegradation policy. EPA's role in the water quality standards program is to review and approve or disapprove the State-adopted water quality standards and, where necessary, to promulgate Federal water quality standards.

Section 401 of the CWA provides that States may grant or deny "certification" for Federally permitted or licensed activities that may result in a discharge to the waters of the United States. The decision to grant or deny certification is based on the State's determination regarding whether the proposed activity will comply with the requirements of certain sections of the CWA enumerated in section 401(a)(1). These sections include those requiring water quality standards and effluent limitations. If a State denies certification, the Federal permitting or licensing agency is prohibited from issuing a permit or license. Certifications are subject to objection from downstream States where the downstream State determines that the proposed activity would violate its water quality requirements. Certifications are normally issued by the State in which the discharge originates, but may be issued in certain circumstances by an interstate agency or the Administrator.

The February 4, 1987 Amendments to the Act added a new section 518, which requires EPA to promulgate regulations specifying how the Agency will treat qualified Indian Tribes as States for the purposes of, among others, the section 303 (water quality standards) and section 401 (certification) programs described above. Section 518 also requires EPA, in promulgating these regulations, to establish a mechanism to resolve unreasonable consequences that may result from an Indian Tribe and a State adopting differing water quality standards on common bodies of water.

On September 22, 1989, the Environmental Protection Agency (EPA) proposed amendments to the water quality standards regulations in response to CWA section 518 requirements (see 54 FR 39098). The proposal included amendments that would: (1) Add procedures by which an Indian Tribe could qualify for treatment as a State for purposes of the section 303 water quality standards and section 401 certification programs of the Clean Water Act, and (2) establish a mechanism to resolve unreasonable consequences that may result from an Indian Tribe and a State adopting differing water quality standards on common bodies of water. Pursuant to CWA section 518, the proposal had been prepared in consultation with States and Indian Tribes. The proposal was developed with the assistance of an informal work group composed of representatives from Indian Tribes, States, and EPA. In addition, a national consultation meeting involving States and Tribes was held in Denver, Colorado in June of 1988 for the purpose of obtaining additional comments. Finally, EPA distributed a number of drafts of the proposal to all States and Tribes (following a mailing list of Federally recognized Tribes obtained by the Office of Water) for review and comment prior to issuing the proposed rule.

Public hearings on the September 22, 1989 proposal were held in Phoenix, Arizona on November 14, 1989, Rapid City, South Dakota on November 16, 1989, and Washington, DC on December 5, 1989. A total of 25 people registered at the three hearings. The public comment period closed on December 22, 1989. EPA received a total of 34 written comments on the proposed rule.

EPA notes that more comments were received on the various drafts of the proposed rule than on the proposed rule which was ultimately published. EPA believes that many of the difficult issues were resolved during the consultation period prior to proposal, and that this explains why relatively few comments were received on the proposal and why relatively few changes to the proposal were required in preparing today's final rule. Another reason is that EPA had previously published similar procedures under CWA section 518 for the section 106 water quality management and planning program (54 FR 14354; April 11, 1989).

Additional background information was included in the preamble to the proposed rulemaking.

B. Changes to the Proposed Rule

Two changes were made to the rule as a result of the public comments.

EPA received several comments on the provision of the dispute resolution mechanism which specifies how arbitrators should be selected (see § 131.7(f)(2)). These various comments suggested that such persons should be acceptable to all parties, knowledgeable about water quality standards, knowledgeable about Indian law and Tribal governments, and impartial.

The rule was amended to provide that the Regional Administrator select as arbitrators and panel members individuals who: (1) Are agreeable to all

affected parties, (2) are knowledgeable concerning the requirements of the water quality standards program, (3) have a basic understanding of the political and economic interests of affected Tribes and States, and (4) are expected to fulfill the duties fairly and impartially. The regulation provides wide latitude as to who a Regional Administrator may appoint including EPA employees, employees of other Federal agencies, or "other individuals with appropriate qualifications." EPA believes that this regulatory provision should be broad enough to encompass all possibilities.

Section 131.7 (f)(1)(ii) requires that "mediators shall act as neutral facilitators * * *". Implicit in the regulation is the sense that mediators and arbitrators will act fairly and impartially. EPA knows of no regulatory provision that will guarantee impartiality. It should be noted, however, that there is an appeals process included in the regulation (see § 131.7(f)(2)(v)) for those instances where a party believes the arbitrator's recommendation is an action contrary to or inconsistent with the Clean Air Act.

The second suggested change was that EPA should define the terms "promptly" and "reasonable efforts" used in one provision of the dispute resolution mechanism (§ 131.7(d)). The referenced section requires EPA, upon a determination by EPA that a dispute resolution action is required, to "promptly" notify affected parties that EPA is initiating an action and to make "reasonable efforts" to ensure that all interested groups also have notice that EPA is initiating a dispute resolution action.

EPA revised § 131.7(d) to replace the term "promptly" with "within 30 days," and specified that "reasonable efforts" shall include but not be limited to: (1) Written notice to responsible Indian and State agencies, and other affected Federal agencies, (2) notice to the specific individuals or entity that is alleging that an unreasonable consequence is resulting from differing standards having been adopted on a common body of water, (3) public notice in local newspapers, radio, and television, as appropriate, and (4) publication in trade journal newsletters, and (5) other means as appropriate.

Many of the comments received on the proposed rulemaking were suggestions for clarification which are responded to affirmatively in the Response to Public Comment Section below. Where appropriate, EPA has attempted to provide responses which will also serve as guidance for implementation of today's rule. The substance of these responses and any additional guidance needed will be added to the Water Quality Standards Handbook which contains the program guidance supplementing the requirements of the water quality standards regulation. The Agency's rationale for addressing the few suggestions for revising the regulatory language is also included in the Response to Public Comments Section.

C. Response to Public Comments

The response to public comments is organized into four sections: (1) Treatment of Tribes as States, (2) dispute resolution mechanism, (3) establishing water quality standards on Indian reservations, and (4) other comments. Comments discussed within each of these sections have been further categorized by topic.

1. Treatment of Tribes as States

Comments on the Authority Requirements

a. The Scope of Inherent Tribal Authority

Comment: The issue of whether and how EPA should require Tribes to demonstrate that they meet the requirements of section 518(e)(2) of the CWA, i.e., that they can demonstrate authority to regulate water quality within the boundaries of their reservations, attracted significant comment. Numerous commenters remarked on the significance of the Supreme Court's decision in *Brendale* v. *Confederated Tribes and Bands of the Yakima Nation*, 492 U.S. 408, (1989) for EPA's programs and today's regulations, although there were widely differing views of how to read the decision. Several commenters asserted that *Brendale* clearly indicates that an Indian Tribe may not enforce its water quality standards against non-members of the Tribe on non-Indian-owned fee lands within the boundaries of the reservation or that, at the very least, the Tribe must include detailed factual information that describes the non-Indian lands the Tribe proposes to regulate and the reasons supporting its jurisdictional assertions.

By contrast, other commenters asserted that Tribes invariably possess inherent authority to regulate all reservation waters, and that EPA should presume the existence of such authority and not require Tribes to make any specific factual showing. These commenters asserted that such authority over environmental matters was recognized in *Montana* v. *United States*, 450 U.S. 544 (1981), and not diminished by *Brendale*.

Response: EPA does not read the holding in *Brendale* as preventing EPA from recognizing Tribes as States for purposes of regulating water quality on fee lands within the reservation, even if section 518 is not an express delegation of authority (an issue discussed in detail below). In *Brendale*, both the State of Washington and the Yakima Nation asserted authority to zone non-Indian real estate developments on two parcels within the Yakima reservation, one in an area that was primarily Tribal, the other in an area where much of the land was owned in fee by nonmembers. Although the Court analyzed the issues and the appropriate interpretation of *Montana* at considerable length, the nine members split 4:2:3 in reaching the decision that the Tribe should have exclusive zoning authority over property in the Tribal area and the State should have exclusive zoning authority over non-Indian owned property in the fee area. The decision reflects some difficult issues in this area of the law and, as the comments indicated, has generated considerable controversy over the extent of Tribal authority.

Given the lack of a majority rationale, the primary significance of *Brendale* is in its result, which was fully consistent with *Montana* v. *United States*, which previously had held that:

> To be sure, Indian tribes retain inherent sovereign power to exercise some forms of civil jurisdiction over non-Indians on their reservations, even on non-Indian fee lands. A tribe may regulate * * * the activities of non-members who enter consensual relationships with the tribe or its members, through commercial dealing, contracts, leases, or other arrangements * * *. A tribe may also retain inherent power to exercise civil authority over the conduct of non-Indians on fee lands within its reservation when that conduct threatens or has some direct effect on the political integrity, the economic security, or the health or welfare of the tribe.

Montana, 450 U.S. at 565–66 (citations omitted).

In *Brendale*, the Court applied this test, finding Tribal authority over activities that would threaten the health and welfare of the Tribe, 492 U.S. at 443–444 (Stevens, J., writing for the Court); id. at 449–450 (Blackmun, J. concurring). Conversely, the Court found no Tribal jurisdiction where the proposed activities "would not threaten the Tribe's * * * health or welfare." *Id.* at 432 (White, J., writing for the Court). The Agency therefore disagrees with commenters who argue that *Brendale* somehow overrules *Montana*.

As further discussed below, EPA agrees with certain commenters that pending further judicial or

Congressional guidance on the extent to which section 518 delegates additional authority to Tribes, the ultimate decision regarding Tribal authority must be made on a Tribe-by-Tribe basis and has finalized the proposed process for making those determinations. Thus, EPA rejects the suggestion of other commenters that EPA make a conclusive statement regarding the extent of Tribal jurisdiction over fee lands for all Tribes and all waters or even a statement regarding any particular reservation, except in the context of an actual treatment as a State application. This is consistent with the approach the Agency adopted under the Safe Drinking Water Act, when it determined that it would not "automatically assume," or adopt, in the first instance, a rebuttable presumption of tribal authority over all water within a reservation that would operate even in the absence of any factual evidence. See 53 FR 37396, 37399 (September 26, 1988). Nonetheless, EPA sees no reason in light of *Brendale* to assume that Tribes would be *per se* unable to demonstrate authority over water quality management on fee lands within reservation borders. Rather, as discussed below, EPA believes that as a general matter there are substantial legal and factual reasons to assume that Tribes ordinarily have the legal authority to regulate surface water quality within a reservation.

In evaluating whether a tribe has authority to regulate a particular activity on land owned in fee by nonmembers but located within a reservation, EPA will examine the Tribe's authority in light of the evolving case law as reflected in *Montana* and *Brendale*. The extent of such tribal authority depends on the effect of that activity on the tribe. As discussed above, in the absence of a contrary statutory policy, a tribe may regulate the activities of non-Indians on fee lands within its reservation when those activities threaten or have a direct effect on the political integrity, the economic security, or the health or welfare of the tribe. *Montana*, 450 U.S. at 565–66. However, in *Brendale* several justices argued that for a tribe to have "a protectable interest" in an activity, the activity's effect should be "demonstrably serious." *Brendale*, 1492 U.S. at 431 (White, J.). In addition, in a more recent case involving tribal criminal jurisdiction, a majority of the Court indicated in *dicta* that a tribe may exercise civil authority "where the exercise of tribal authority is vital to the maintenance of tribal integrity and self-determination." *Duro* v. *Reina*, 110 S.Ct. 2053, 2061 (1990). See also *Brendale*, 492 U.S. at 450 (Blackmun, J.) (test for inherent tribal authority whether activities "implicate a significant tribal interest"); *id.* at 462 (Blackmun, J.) (test for inherent tribal authority whether exercise of authority "fundamental to the political and economic security of the tribe").

As discussed above, the Supreme Court, in recent cases, has explored several options to assure that the impacts upon tribes of the activities of non-Indians on fee land, under the *Montana* test, are more than *de minimis*, although to date the Court has not agreed, in a case on point, on any one reformulation of the test. In response to this uncertainty, the Agency will apply, as an interim operating rule, a formulation of the standard that will require a showing that the potential impacts of regulated activities on the tribe are serious and substantial.

The choice of an Agency operating rule containing this standard is taken solely as a matter of prudence in light of judicial uncertainty and does not reflect an Agency endorsement of this standard *per se*. Moreover, as discussed below, the Agency believes that the activities regulated under the various environmental statutes generally have serious and subtantial impacts on human health and welfare. As a result, the Agency believes that tribes will usually be able to meet the Agency's operating rule, and that use of such a rule by the Agency should not create an improper burden of proof on tribes or create the administratively undesirable result of checkerboarding reservations.

Whether a tribe has jurisdiction over activities by nonmembers will be determined case-by-case, based on factual findings. The determination as to whether the required effect is present in a particular case depends on the circumstances.

Nonetheless, the Agency may also take into account the provisions of environmental statutes, and any legislative findings that the effects of the activity are serious in making a generalized finding that Tribes are likely to possess sufficient inherent authority to control reservation environmental quality. See, e.g., *Keystone Bituminous Coal Assoc.* v. *DeBenedictis*, 480 U.S. 470, 476–77 and notes 6, 7 (1987). As a result, in making the required factual findings as to the impact of a water-related activity on a particular tribe, it may not be necessary to develop an extensive and detailed record in each case. The Agency may also rely on its special expertise and practical experience regarding the importance of water management, recognizing that clean water, including critical habitat (i.e., wetlands, bottom sediments, spawning beds, etc.), is absolutely crucial to the survival of many Indian reservations.

The Agency believes that Congressional enactment of the Clean Water Act establishes a strong federal interest in effective management of water quality. Indeed, the primary objective of the CWA "is to restore and maintain the chemical, physical, and biological integrity of the Nation's waters" (section 101(a)) and, to achieve that objective, the Act establishes the goal of eliminating all discharges of pollutants into the navigable waters of the U.S. and attaining a level of water quality which is fishable and swimmable (section 101(a)(1)–(2)). Thus the statute itself constitutes, in effect, a legislative determination that activities which affect surface water and critical habitat quality may have serious and substantial impacts.

EPA also notes that, because of the mobile nature of pollutants in surface waters and the relatively small length/size of stream segments or other water bodies on reservations, it would be practically very difficult to separate out the effects of water quality impairment on non-Indian fee land within a reservation with those on tribal portions. In other words, any impairment that occurs on, or as a result of, activities on non-Indian fee lands are very likely to impair the water and critical habitat quality of the tribal lands. This also suggests that the serious and substantial effects of water quality impairment within the non-Indian portions of a reservation are very likely to affect the tribal interest in water quality. EPA believes that a "checkerboard" system of regulation, whereby the Tribe and State split up regulation of surface water quality on the reservation, would ignore the difficulties of assuring compliance with water quality standards when two different sovereign entities are establishing standards for the same small stream segments.

EPA also believes that Congress has expressed a preference for Tribal regulation of surface water quality to assure compliance with the goals of the CWA. This is confirmed by the text and legislative history of section 518 itself. The CWA establishes a policy of "recogniz[ing], preserv[ing], and protect[ing] the primary responsibilities and rights of States to prevent, reduce, and eliminate pollution, [and] to plan the development and use (including restoration, preservation, and enhancement) of land and water resources" section 101(b). By extension,

the treatment of Indian Tribes as States means that Tribes are to be primarily responsible for the protection of reservation water resources. As Senator Burdick, floor manager of the 1987 CWA Amendments, explained, the purpose of section 518 was to "provide clean water for the people of this Nation." 133 Cong. Rec S1018 (daily ed. Jan 21, 1987). This goal was to be accomplished, he asserted, by giving "tribes * * * the primary authority to set water quality standards to assure fishable and swimmable water and to satisfy all beneficial uses." *Id.*

In light of the Agency's statutory responsibility for implementing the environmental statutes, its interpretations of the intent of Congress in allowing for tribal management of water quality within the reservation are entitled to substantial deference. *Washington Dept. of Ecology* v. *EPA*, 752 F. 2d 1465, 1469 (9th Cir. 1985); *see generally Chevron, USA* v. *NRDC*, 467 U.S. 837, 843–45 (1984).

The Agency also believes that the effects on tribal health and welfare necessary to support Tribal regulation of non-Indian activities on the reservation may be easier to establish in the context of water quality management than with regard to zoning, which was at issue in *Brendale*. There is a significant distinction between land use planning and water quality management. The Supreme Court has explicitly recognized such a distinction: "Land use planning in essence chooses particular uses for the land; environmental regulation * * * does not mandate particular uses of the land but requires only that, however the land is used, damage to the environment is kept within prescribed limits." *California Coastal Commission* v. *Granite Rock Co.*, 480 U.S. 572, 587 (1987). The Court has relied on this distinction to support a finding that states retain authority to carry out environmental regulation even in cases where their ability to carry out general land use regulation is preempted by federal law. *Id.* at 587–89.

Further, water quality management serves the purpose of protecting public health and safety, which is a core governmental function, whose exercise is critical to self-government. The special status of governmental actions to protect public health and safety is well established.[1] By contrast, the power to zone can be exercised to achieve purposes which have little or no direct nexus to public health and safety. *See e.g. Brendale*, see, e.g., Brendale, 492 U.S. at 420 n.5 (White, J.) (listing broad range of consequences of state zoning decision). Moreover, water pollution is by nature highly mobile, freely migrating from one local jurisdiction to another, sometimes over large distances. By contrast, zoning regulates the uses of particular properties with impacts that are much more likely to be contained within a given local jurisdiction.

Operationally, EPA's generalized findings regarding the relationship of water quality to tribal health and welfare will affect the legal analysis of a tribal submission by, in effect, supplementing the factual showing a tribe makes in applying for treatment as a State. Thus, a tribal submission meeting the requirements of § 131.8 of this regulation will need to make a relatively simple showing of facts that there are waters within the reservation used by the Tribe or tribal members, (and thus that the Tribe or tribal members could be subject to exposure to pollutants present in, or introduced into, those waters) and that the waters and critical habitat are subject to protection under the Clean Water Act. The Tribe must also explicitly assert that impairment of such waters by the activities of non-Indians, would have a serious and substantial effect on the health and welfare of the Tribe. Once the Tribe meets this initial burden, EPA will, in light of the facts presented by the tribe and the generalized statutory and factual findings regarding the importance of reservation water quality discussed above, presume that there has been an adequate showing of tribal jurisdiction of fee lands, unless an appropriate governmental entity (e.g., an adjacent Tribe or State) demonstrates a lack of jurisdiction on the part of the Tribe.

The Agency recognizes that jurisdictional disputes between tribes and states can be complex and difficult and that it will, in some circumstances, be forced to address such disputes. However, EPA's ultimate responsibility is protection of the environment. In view of the mobility of environmental problems, and the interdependence of various jurisdictions, it is imperative that all affected sovereigns work cooperatively for environmental protection, rather than engage in confrontations over jurisdiction.

b. The Effect of Section 518 on Tribal Authority over Non-Indian Activities

Comment: EPA has received letters from three members of Congress, Senator Simpson, Senator Baucus, and Representative Morrison, regarding the impact of *Brendale* on EPA's Indian Policy and the development of "treatment as a State" regulations for EPA water programs in light of the legislative history of section 518. All three commenters asserted that Congress did not intend to expand the scope of Tribal authority over non-Indians on the reservation by the passage of section 518.

Rep. Morrison asserted that he inserted into the Congressional Record a memorandum written by staff on the House Committee on Interior and Insular Affairs regarding section 518 (also inserted into the Congressional Record by Senator Adams at 133 Cong. Rec. S753–54 (daily ed. January 14, 1987)) solely to demonstrate that section 518 was not intended to expand Tribal water quantity rights. 133 Cong. Rec. H184–85 (daily ed. Jan 8, 1987). Rep. Morrison disavowed other statements from that memorandum which might support the proposition that Congress intended to authorize Tribal jurisdiction over non-members on reservations. ("Indian tribes have the right to regulate lands and other natural resources within the reservation, *including non-Indian owned fee lands or resources.*" *Id.* (emphasis added)). Rep. Morrison stated his belief that Congress did not, by the passage of section 518, expand the scope of Tribal authority over non-Indians. In light of this legislative history, Rep. Morrison asserted that, consistent with *Brendale*, EPA should not allow Tribal regulation of non-members on so-called "open" reservations.

Senators Baucus and Simpson also recommended that EPA consider the legislative history of section 518(e) and the *Brendale* decision and determine not to allow Tribal regulation over non-members on the reservation.

Finally, all three of these Congressional commenters asserted that the legislative history of section 518 clearly shows that it was not intended to affect rights to water quantity under State law. The concerns raised by these Members of Congress echo other comments discussed elsewhere in today's notice. Several commenters asserted that section 518(e)(2) should not be read as an express grant of Congressional authority to Indian Tribes to regulate such fee lands, despite indications in *Brendale* to the contrary.

By contrast, Senators McCain, Burdick, and Inouye expressed a view that section 518(e) delegates Tribes authority to regulate all waters within reservation boundaries including those on non-Indian fee lands. Some

[1] This special status has been reaffirmed by all nine justices in the context of Fifth Amendment takings law. *See Keystone Bituminous Coal Association* v. *DeBenedictis*, 480 U.S. 470, 491 n. 20 (1987); *Id* at *512*, (Rehnquist, C.J., dissenting).

commenters cited *Brendale* for this proposition. The latter argument of these commenters is based upon the opinion of Justice White in *Brendale*. Justice White indicates that certain statutes may delegate Federal authority to Tribes, thereby providing a basis for authority over all lands within a reservation. As Justice White explained, on the record in *Brendale* there could be

> no contention * * * that Congress has expressly delegated to the Yakima Nation the power to zone fee lands of nonmembers of the Tribe. *Compare 18 U.S.C. 1151, 1161 (1982 ed., and Supp. V); 33 U.S.C. 1377 (e) and (h)(1) (1982 ed., Supp. V)* [i.e., sections 518(e) and 518(h)(1) of the CWA].

492 U.S. at 428 (1989) (White, J.) (emphasis added). This language clearly categorizes the two cited statutory schemes as express delegations of Federal authority. Thus, Justice White, *inter alia*, cites the Clean Water Act as an example of an explicit delegation of authority over non-Indian activities to Indian Tribes. *Response:* EPA has fully considered the Congressional comments and their interpretation of the legislative history of section 518. EPA must, of course, consider contemporaneous legislative history as it is written, and has been cautioned not to rely on subsequent statements by Members of Congress. *Hazardous Waste Treatment Council* v. *EPA*, 886 F.2d 355 (DC Cir. 1989), *cert. denied*, 111 S.Ct. 139 (1990).

EPA differs with the Congressional commenters to the extent that they suggest the legislative history of section 518 is clear and expresses an intent to limit the scope of Tribal authority. EPA notes that other legislative history might be interpreted as evincing Congressional intent to confer expanded Tribal authority over non-Indians within the reservation.

In particular, the following colloquy between Senators Inouye and Burdick on this issue is very relevant:

> *Mr. Inouye:* * * * I am concerned about section 518(e)(2). As I read that provision, it enables qualified Indian tribes to exercise the same water quality regulatory jurisdiction *with respect to water that traverses, borders, or is otherwise located within their reservations* [paraphrasing section 518(h)(1) and 18 U.S.C. 1151(a)] that States have for regulation of water outside Indian reservations. Is my understanding of Section 518(e) correct?
>
> *Mr. Burdick:* Yes. The intent of the conferees was to assure that Indian tribes would be able to exercise the same regulatory jurisdiction over water quality matters *with regard to waters within Indian jurisdiction* that States have been exercising over their water.

133 Cong. Rec. S1018 (daily ed. Jan. 21, 1987) (emphasis added). Senator Inouye's statement could arguably support a reading that Congress intended to recognize Tribal authority over all waters within the reservation, including those managed by non-Indians. Mr. Burdick, a member of the Conference Committee, agrees with Senator Inouye's statement.

However, in EPA's view this colloquy is ambiguous and inconclusive. Senator Burdick, in responding to Senator Inouye, agrees that under section 518 Tribes may regulate waters only if they are already "within Indian jurisdiction." However, Senator Burdick was only recognizing the status quo, *i.e.*, whatever is within Indian jurisdiction may be regulated via section 518. Senator Burdick's statement does not clearly show that he—or the Congress as a whole—intended to legislate that all waters within the reservation are in fact "within Indian jurisdiction." Thus, the colloquy is circular: Indians have jurisdiction if, but only if, they have jurisdiction from some source other than section 518. It does not clearly indicate whether Congress intended to expand what lies "within Indian jurisdiction."

Further, if this colloquy were to be construed as supporting an expansion of tribal authority, it would arguably conflict with a statement Senator Burdick had made earlier in response to an inquiry from Senator Baucus. In that discussion, Senator Burdick reiterated that section 518 was not intended to affect existing water quantity rights, and added that "*[p]rivate lands* and water rights owners within boundaries of Indian reservations are not to be *additionally* affected by this act." 133 Cong. Rec. S753 (daily ed. January 14, 1987) (emphasis added). This could suggest that the Act was not intended to alter the status quo regarding regulatory authority over fee lands.

The legislative history in the House is also unclear as to whether Congress intended to expand tribal power over non-Indians. The statement in the House staff memorandum cited above supports a view that under current case law Tribes already possess regulatory authority over non-Indians within reservation boundaries; thus it would be unnecessary to delegate such authority to tribes. Insertion of this memorandum into the Congressional Record could suggest that the House agreed with that view; however, this aspect of the memorandum was never the subject of House discussions, which focused almost exclusively on issues relating to water rights.

EPA believes that if Congress had intended to make a change as important as an expansion of Indian authority to regulate nonmembers, it probably would have done so through statutory language and discussed the change in the committee reports. Given that the legislative history ultimately is ambiguous and inconclusive, EPA believes that it should not find that the statute expands or limits the scope of Tribal authority beyond that inherent in the Tribe absent an express indication of Congressional intent to do so. See *Montana*, 450 U.S. at 564. Therefore, EPA has decided that it will, as discussed above, continue to recognize inherent Tribal civil regulatory authority to the full extent permitted under Federal Indian law, in light of *Montana*, *Brendale*, and other applicable case law.

EPA believes that Congress only manifested an explicit intent to authorize EPA to treat Indian Tribes as States over any activities within the scope of Tribal authority in light of the relevant principles of Federal Indian law. EPA believes that this approach will best effectuate the overall purposes of the statute.

EPA agrees with those commenters who stated that Justice White's opinion in *Brendale* can be read to suggest a contrary conclusion, and to indicate that at least four justices of the Supreme Court would apparently interpret section 518(e) as expressly delegating to Tribes the authority to regulate water quality on reservations, including those affected by activities on non-Indian fee lands. Nonetheless, EPA recognizes that Justice White's opinion was not a majority opinion of the Court and was not necessary to the decision even of the plurality that joined it, since the issue was not before the Court in *Brendale*. Nor is there any discussion in the opinion about the somewhat confusing legislative history of section 518. The passing reference in that opinion does not finally resolve the question of whether section 518(e) is a delegation of authority, and, as discussed above, EPA does not believe that it can make an absolute determination that Congress in fact expressed a clear intent on the issue.

EPA agrees with the Congressional commenters that section 518 does not affect existing water quantity rights. This has been the Agency's consistent position, based on the language of sections 101(g) and 518(a).

c. Procedural Requirements for Demonstrating Inherent Tribal Authority

Comment: Numerous comments submitted before and after the proposed rule was published have suggested that the provision (see § 131.8(b)(3)(iii)) requiring that Tribes submit a copy of all documents which support the Tribe's assertion of authority is unnecessary,

inappropriate, and flows from a misunderstanding of Indian law. These commenters argued that Tribes have inherent authority unless Congress rescinds that authority. In addition, these commenters stated, since section 518 specifically authorizes Tribal authority, no such demonstration and supporting documentation is needed.

Response: As discussed in detail above, the Agency presumes that, in general, Tribes are likely to possess the authority to regulate activities affecting water quality on the reservation. The Agency does not believe, however, that it would be appropriate to recognize Tribal authority and approve treatment as a State requests in the absence of verifying documentation. In addition, in light of the legislative history of section 518, the question of whether section 518(e) is an explicit delegation of authority over non-Indians is not resolved. Therefore, EPA does not believe it is currently appropriate to eliminate the requirement that Tribes make an affirmative demonstration of their regulatory authority. EPA will authorize Tribes to exercise responsibility for the water quality standards program once the Tribe shows that, in light of the factual circumstances and the generalized findings EPA has made regarding reservation water quality, it possesses the requisite authority.

EPA would advise Tribes, in their Attorney-General statements, to outline all bases for concluding that the Tribe has adequate authority. This can only help EPA to make a proper determination to treat the Tribe as a State.

As stated in the preamble to the proposal, where the Regional Administrator concludes that a Tribe has not adequately demonstrated its authority with respect to an area in dispute, then Tribal assumption of the standards program would be restricted accordingly. If the authority in dispute were focused on a limited area, this would not necessarily delay the Agency's decision to treat the Tribe as a State for the non-disputed areas.

Comment: Numerous commenters suggested that § 131.8(b)(3)(i), which requires the Tribe to submit a map of legal description of the area over which the Indian Tribe asserts authority to regulate water, should be amended to require that fee lands and lands owned by non-members and non-Indians be shown on the map.

Response: No such amendment was made to the regulations. EPA believes that, in some cases, both States and Tribes may want to identify the location of fee lands on reservations. However, EPA does not believe it is appropriate to specifically require Tribes to submit such information in all cases. EPA also believes that in some cases States are more likely to have ready access to such information than are Tribes. EPA further believes that the regulation clearly requires Tribes to identify the area over which the Tribe asserts authority to regulate water quality, and that requiring an identification of fee lands and lands owned by non-Indians in all cases is unnecessary and unduly burdensome. Finally, EPA notes that § 131.8(b)(5) gives the Regional Administrator the discretion to require whatever additional information is necessary to support a Tribal application on a case-by-case basis.

d. Treatment as a State for Off-Reservation Waters Within Inherent Tribal Authority

Comment: Several comments were received regarding the geographic scope of programs authorized under section 518(e)(2). The provision authorizes EPA to treat a Tribe as a State for water resources which are :

> held by an Indian Tribe, held in trust for Indians, held by a member of an Indian Tribe if such property interest is subject to a trust restriction on alienation, or *otherwise within the borders of an Indian reservation.*

(emphasis added)

EPA has consistently read the phrase "or otherwise within * * *" as a separate category of water resources and also as a modifier of the preceding three categories of water resources, thus limiting the Tribe to acquiring treatment as a State status for the four specified categories of water resources within the borders of the reservation.

Comments received suggested that EPA should alter its reading of this provision to allow Tribes to qualify for treatment as a State over all water resources within its jurisdiction. These comments asserted that limiting Tribes to water resources within the reservation would prevent a Tribe from obtaining treatment as a State status over water resources outside the reservation to which it has legitimate jurisdictional claim. Examples cited included traditional resource areas (known as "usual and accustomed" areas) outside reservation borders, and all lands held in trust for Tribes by the U.S. Government or held by individual Indians that lie outside reservation borders, lands in "Indian Country" (as defined in 18 U.S.C. 1151) that lie outside reservation borders and, in general, all water resources within the territorial jurisdiction of the Tribe that lie outside reservation borders.

One commenter pointed out that often such lands are subject to Tribal or Federal jurisdiction and are thus beyond the police power and regulatory authority of the State in which they are located. This comment concluded that failure to provide Tribes with an opportunity to obtain treatment as a State status over such lands would create "regulatory voids" in which neither States nor Tribes have clear authority. Several comments suggested that resolving this issue could be accomplished simply by revising the definition of Federal Indian Reservation included in § 131.3(k).

In contrast, other commenters asserted that EPA is correct in reading the phrase "or otherwise within the borders * * *" as a modifier of the preceding three categories of water resources. These commenters pointed out that failure to do so would render the statute nonsensical and contradict congressional intent. However, these commenters also asserted that EPA is not correct in reading the phrase "or otherwise within the borders * * *," as a fourth category of water resources, because to do so would render the three previous clauses superfluous. These commenters therefore conclude that section 518(e)(2) should not be read as authorizing Tribes to regulate non-Indian owned lands within the boundaries of the reservation.

Response: Under today's rule, Tribes are limited to obtaining treatment as a State status for only water resources within the borders of the reservation over which they possess authority to regulate water quality. The meaning of the term "reservation" must, of course, be determined in light of statutory law and with reference to relevant case law. EPA considers trust lands formally set apart for the use of Indians to be "within a reservation" for purposes section 518 (e)(2), even if they have not been formally designated as "reservations." *Oklahoma Tax Commission* v. *Citizen Band Potawatomi Indian Tribe of Oklahoma*, 111 S. Ct. 905, 910 (1991). This means it is the status and use of the land that determines if it is to be considered "within a reservation" rather than the label attached to it. EPA believes that it was the intent of Congress to limit Tribes to obtaining treatment as a State status to lands within the reservation. EPA bases this conclusion, in part, on the definition of "Indian Tribe" found in CWA section 518(h)(2). As discussed above, EPA also does not believe that section 518(e)(2) prevents EPA from recognizing Tribal authority over non-Indian water resources located within the reservation

if the Tribe can demonstrate the requisite authority over such water resources.

Comments on the Capability Requirements

Comment: A variety of comments were received concerning the general issue of Tribal capability (§ 131.8(a)(4) and (b)(4)). Comments on this question ranged from suggesting that EPA should require no demonstration of capability at all to making the capability requirements stronger. Several comments asserted that rejecting Tribes based on capability will only heighten the unevenness of experience between States and Tribes.

Response: EPA made no change in the regulation. The provision is not unduly burdensome and EPA intends to apply similar procedures for Tribes qualifying as States in all CWA programs. The Clean Water Act establishes basic requirements for a Tribe to meet in order to qualify for treatment as a State. Eliminating the requirement to demonstrate capability would fail to meet these statutory requirements. On the other, hand, EPA does recognize the fact that for many Tribes the assumption of various Clean Water Act programs is new. Information necessary for EPA to make determinations of capability must be balanced against the need to allow Tribes to gain experience in CWA programs. EPA believes that today's rule provides that balance.

Comment: A comment was received suggesting that since States are required to provide judicial review of section 401 certification rulings, Tribal section 401 certifications should also be subject to judicial review. Related comments asserted that the rule should require, as part of the demonstration of capability, a demonstration of separation of powers for executive, legislative, and judicial functions, or at least describe how bifurcation of Tribal regulatory and proprietary roles will occur.

Response: EPA disagrees that States are required to provide judicial reviews of section 401 certifications. Judicial reviews of section 401 certifications are conducted based on the requirements of State laws, not the Clean Water Act. Therefore, EPA has not required Tribes to provide such judicial review, as it is a matter of Tribal law. Similarly, EPA has not required Tribes to demonstrate separation of powers because such a demonstration is not required by the Clean Water Act. EPA will, however, in the context of deciding to authorize Tribal NPDES programs or 404 permit programs, consider potential conflicts of interest where the Tribe would be in the position of issuing a permit to a Tribal entity.

Comment: Several comments were received requesting that EPA should clarify how the Agency will evaluate whether the Tribe has a history of successful managerial peformance of public health or environmental programs, and clarify how much detail is required in describing a Tribe's history of managerial experience (see section 131.8(b)(4)(i)).

Response: In evaluating Tribal experience in public health and environmental programs, EPA will look for indications that the Tribe has participated in such programs, whether the programs be those administered by EPA, other Federal Agencies, or of Tribal origin. For example, several Tribes are known to have participated in developing areas-wide water management plans or Tribal water quality standards. EPA will also look for evidence of historical budget allocations dealing with public health or environmental programs along with any experience in monitoring in related programs. In general, EPA will look favorably on Tribes which have experience in managing environmental programs, because such experience is an indicator of existing capability and commitment to environmental protection. In most cases, EPA anticipates that submission of a brief narrative statement on this topic will be sufficient.

Comment: EPA specifically invited comment on several options pertaining to the proposed demonstration of capability requirement. The proposed requirement (in § 131.8(b)(4)(v)) provided that the Tribe may either demonstrate existing capability, or submit a plan on how it proposes to acquire the capability to administer the program if such capability does not now exist. The alternative options EPA requested comments on were: (1) Exclude the provision to submit a plan detailing steps of acquiring the necessary management and technical skills, (2) include a provision which would allow EPA to withdraw a treatment as a State determination where the Tribe fails to demonstrate adequate capability (e.g., by failing to submit water quality standards for EPA review within 3 years from the date of qualifying for treatment as a State), and (3) include a provision for Tribes to submit draft water quality standards as part of the demonstration of capability.

Comments on the option to delete the provision allowing Tribes to submit a plan to acquire capability were mixed. Several comments supported deletion of this provision. One comment asserted that treatment as a State should not be granted until capability is achieved; a plan to acquire capability whould have little meaning if the Tribe receives authority prior to actually achieving that capability. Other comments supported inclusion of this provision because the plan would provide information on the management and technical skills of Tribes. A related comment was received that EPA should retain the provision but delete the requirement to indicate where Tribal funding would be acquired.

Comments on the option to allow EPA to withdraw a treatment as a State determination were also mixed. Several comments supported some provision allowing EPA to withdraw a treatment as a State determination, for example where the Tribe fails to demonstrate acceptable performance or use of the authority. Other comments opposed such a provision (e.g., because it is counter to the Congressional mandate of section 518). One comment opposed such a provision because it would be unfair to withdraw treatment as a State for failure to develop a Tribal program in the absence of adequate Federal financial and technical assistance.

Conflicting comments on the option to require Tribes to submit draft water quality standards as part of the demonstration of capability were received. A number of comments indicated that such a provision would be burdensome, unproductive, and of little practical purpose. Other comments, however, supported such a provision because draft standards would provide evidence of technical skills and would allow review of Tribal water quality standards early in the process.

Response: EPA made no change in the proposed regulation. EPA believes that any Tribe demonstrating sufficient interest in applying for the program and able either to: (1) Demonstrate existing capability, or (2) submit a reasonable plan for acquiring such capability, should not be excluded from consideration. The proposed requirement was therefore retained. EPA notes, however that such plans will be carefuly reviewed; EPA will not approve Tribal capability demonstrations where such plans do not include reasonable provisions for acquisition of needed personnel as well as reliable funding sources. This decision will also provide consistency with other Clean Water Act programs.

Although submission of draft water quality standards was not added as a requirement, EPA notes that where Tribes have developed water quality standards programs, submission of the

completed standards with the application will normally be sufficient to satisfy the capability requirements, but only where the Tribe can also demonstrate a continuing commitment (i.e., resources and/or technical expertise) for reviewing and revising their completed standards.

EPA believes that the comment regarding Tribal funding sources raises an important point. Prior to applying for the standards program Tribes should become familiar with and give serious consideration to the requirements and associated resource impacts of assuming the burden of the water quality standards program. This was also mentioned in the preamble to the proposed rule. The water quality standrds program, because it requires standards to be reviewed on a triennial basis, can require substantial annual resource commitments.

For example, EPA is currently developing additional proposed amendments to the water quality standards regulation to require triennial review and adoption of necessary numeric water quality criteria for toxic pollutants and, ultimately criteria based on biological measures of water body health. Tribes that qualify for treatment as States will be subject to the existing requirements as well as these new requirements which will be added to section 131 in the near future.

EPA did not, therefore, remove from the rule the requirement for a Tribe to address how it will obtain the funds necessary to acquire the administrative and technical expertise if not currently available. EPA believes this to be a necessary and important showing in support of the overall capability demonstration. EPA notes that Tribes may wish to apply for CWA section 106 funds to support their water quality standards programs and include this source in any discussion of funding sources under § 131.8(4)(v).

Comment: The discussion of capability requirements included in the preamble to the proposed regulation included a statement that qualifying for the standards program has no bearing on the ability of the Tribe to receive a section 106 grant. A comment was received that a Tribe was told by EPA that it had to apply for treatment as a State in order to be eligible for the section 106 program grants.

Response: The commenter misunderstood the discussion. To receive a CWA section 106 program grant, a Tribe must qualify for treatment as a State for purposes of the section 106 program. Interim final rules specifying how tribes may qualify for the section 106 program were promulgated by EPA on April 11, 1989 (54 FR 14357) and are now codified in 40 CFR parts 35 and 130. The preamble discussion simply indicated that a Tribe does not have to also qualify for the standards program in order to receive a section 106 program grant and noted that, in fact, prior acquisition of such grants may be quite useful to Tribes in developing the capabilities needed to qualify for the standards program.

Comments on the Complexity of the Process

Comment: A variety of comments were received concerning the process EPA has established by which a Tribe may qualify for treatment as a State under both the Clean Water Act and the Safe Drinking Water Act. This process is described in § 131.8 of the rule and covers the requirements for Indian Tribes to be treated as States for purposes of water quality standards.

Various comments indicated that the process was too lengthy, cumbersome, and expensive for the Tribes. Some commenters suggested that EPA should separate the legal and programmatic requirements to allow Tribes to meet the legal requirements for all CWA programs with one application. In general, commenters suggested that the process be streamlined to pose less of a burden to Tribes wishing to qualify.

Response: No changes were made in the regulation to streamline or otherwise alter the § 131.8 requirements (with the exception of those previously discussed in section B—Changes to the Proposed Rule).

EPA has developed one procedure applicable to all water programs. To have a different procedure for the standards program would not in the Agency's view simplify the process; rather it would confuse matters. Experience with the initial applications in other programs indicate some delay in the process but EPA believe that is more because the process is new to both EPA and the Tribes rather than because of any inherent fault in the procedure. It is expected that as both parties gain more experience, such delays will be minimal. If a Tribe has already submitted an application for treatment as a State for another program, very little if any new information beyond the request for consideration in the standards program needs to be provided.

Because some programs that potentially may be assumed by Tribes under the Clean Water Act may require specialized information relating to Tribal authorities or capability to administer an effective program, the Agency decided previously to today's rule not to allow Tribes to qualify for treatment as a State for all CWA programs in a single application. However, as stated above, the Agency intends to minimize the impact on a Tribe for qualifying for treatment as a State for various programs by having Tribes submit the basic application once and only submit any additional information that might be required for treatment as a State for another program. In the case of this rule, § 131.8 (b)(iv) and (v) are the provisions which EPA believes are most likely to require information in addition to what is typically submitted with applications for other programs. The two items are the name of the agency of the Indian Tribe charged with establishing, reviewing, implementing and revising water quality standards and a description of the Tribe's technical expertise to administer and manage the program or a plan on how the Tribe intends to acquire such expertise. Section 131.8 (b)(6) of the rule clearly establishes that in seeking qualification as a State, "* * * the Tribe need only provide the required information which has not been submitted in a previous treatment as a State application."

The procedure adopted in today's rule was publicly debated in a rule made final under the Safe Drinking Water Act. Comments on the proposal and changes made may be seen at 53 FR 37408, September 26, 1988, and now codified in 40 CFR part 142. This regulation reflects the procedures established as a result of that rulemaking.

Comment: Several comments asserted that the regulation has redundant and unnecessary requirements, for example that § 131.8(b)(2)(iii) duplicates 131.8(b)(3)(iii) and 131.8(b)(4)(iii), that 131.8(b)(3)(ii) duplicates 131.8(b)(iii), and finally that 131.8(b)(iv) duplicates 131.8(b)(3)(1).

Response: While the Agency concurs that the information in 131.8(b)(2)(iii) is related to that in parts 131.8(b)(3)(iii) and 131.8(b)(4)(iii), it is not necessarily redundant or duplicative. Experience with the standards program with the States has shown that often the administrative and management functions of the standards program are split among various State offices and branches of government. Since this may also hold true for Tribal governments, EPA has maintained the requirements as proposed. However, if the Tribe can cover the requested information in a single response to the Agency, EPA encourages the Tribe to do so. The independent regulatory requirements were maintained not to force Tribes to duplicate information but to ensure that

all information necessary is submitted. In response to a specific comment, EPA notes that submittal of the required "sources of authority" under § 131.8(b)(2)(iii) does not require the same level of detail as the demonstration of authority required under § 131.8(b)(3) and, in general, a brief statement and reference to the assertion of authority under § 131.8(b)(3) will be sufficient.

The Agency reviewed all the referenced paragraphs and does not see that the requirements are either redundant or unnecessary. While they may be related, each requests a different piece of information EPA believes is necessary to make an informed judgment on the Tribal application. Again, however, if the Tribe covers more than one item in a portion of its application, EPA does not see any need for the Tribe to repeat the information—a reference to where EPA may find the information elsewhere in the Tribal application is acceptable.

Comments on the Procedure for Reviewing Tribal Applications

Comment: Several comments were received on the opportunity provided to States to review Tribal assertions of authority (see § 131.8(c)). Various commenters believed this provision to be inappropriate because, for example, Tribes do not review State applications for primacy, States have already established their authority in their primacy applications, and the review is inconsistent with EPA's Indian policy. Other comments suggested that States comment along with everyone else during a general public comment period.

Response: The comments which suggested that States should not be allowed to review Tribal assertions of authority because Tribes do not review State applications for primacy appear to mix primacy requirements under the Safe Drinking Water Act or other CWA programs (such as section 402 NPDES or section 404 dredge and fill) with those established under Clean Water Act section 303. CWA section 303, under which this rule is promulgated, directs States to adopt water quality standards. There is no application process involved, nor is participation by the States optional. However, Indian Tribes, under CWA section 518, must go through a process to qualify for treatment as States.

The provision allowing participation by other governmental entities in EPA's review of Tribal authority does not imply that States or Federal agencies (other than EPA) have veto power over Tribal applications for treatment as a State. Rather, the procedure is simply intended to identify any competing jurisdictional claim and thereby ensure that the Tribe has the necessary authority to administer the standards program. The Agency will not rely solely on the assertions of a commenter who challenges the Tribe's assertion of authority; EPA will make an independent evaluation of the Tribal showing and all available information.

In addition, the provision allowing appropriate governmental entities to comment on Tribal assertions of authority is not intended as a barrier to Tribal program assumption. As stated in the preamble to the proposed rulemaking, where disputes regarding Tribal authority are focused on a limited area, this will not necessarily delay the Agency's decision for to treat the Tribe as a State of the non-disputed areas.

Comment: Several commenters suggested that EPA should provide more definition regarding the "governmental entities" which will be provided notice and an opportunity to comment on the Tribe's assertion of authority (see § 131.8(c)(2)).

Response: EPA defines the phrase "governmental entities" as States, Tribes, and other Federal entities located contiguous to the reservation of the Tribe which is applying for treatment as a State. Such "governmental entities" will provide up to 30 days to comment on Tribal assertions of authority. Neighboring Tribes will be treated as "governmental entities" regardless of whether the neighboring Tribe is treated as a State for purposes of section 303. Where such governmental entities are States, EPA intends to provide notice and an opportunity to comment to the most appropriate State contacts which may include, for example, the Governor, Attorney General, or the appropriate environmental agency head. The rule limits the Agency to only considering comments from such "governmental entities." Local governments such as cities and counties or other local governments are not included in the definition of "governmental entities," and EPA will not consider comments received from such governments in reviewing Tribal assertions of authority.

EPA recognizes that city and county governments which may be subject to or affected by Tribal standards may also want to comment on the Tribe's assertion of authority. Although EPA believes that the responsibility to coordinate with local governments falls primarily upon the State, the Agency will make an effort to provide notice to local governments by placing an announcement in appropriate newspapers. Since the rule limits EPA to considering comments from governmental entities, such newspaper announcements will advise interested parties to direct comments on Tribal authority to appropriate State governments.

The process of notifying States and Tribes and consulting with the Department of Interior, as delineated in this and other EPA regulations implementing the Clean Water Act and the Safe Drinking Water Act, was and is intended merely to assist the Agency in making its determination whether a Tribe has adequate authority to justify treatment as a State by EPA. Such notification and consultation procedures were not and are not intended to establish any form of adjudication or arbitration process to resolve differences between State and Tribal governments. Rather, EPA has a duty to determine whether a Tribe has adequate authority, as defined by federal law and EPA policy, to carry out the grant or program under consideration. The notification and consultation procedures assist EPA in making this determination by providing information and perspectives from the points of view of neighboring Tribal and State governments and the federal agency having extensive expertise in federal Indian law.

Comment: It is unlawful to limit public comment to just the Tribal demonstration of authority. Section 131.8 should allow public review of all four statutory criteria.

Response: CWA section 518 provides EPA with the authority to determine whether Indian Tribes are qualified to be treated as States. The CWA does not require EPA to provide for public comment on Tribal applications. For three of the criteria which Tribes must meet, EPA believes that the Agency will be able to make appropriate determinations absent any public comment. EPA believes that providing for public comment on these three criteria would unnecessarily complicate and potentially delay the process. For the authority criterion, EPA has provided for a 30 day comment period by appropriate governmental entities because the Agency believes that it will be important to gather all available information regarding Tribal authority prior to making a determination. EPA believes that providing for comment on the authority criterion is appropriate because this is the only criterion which outside comments might help to address.

Comment: Several comments pointed out that the proposal did not specify in any detail the procedure by which EPA will consult with the Secretary of the

Interior in making a determination concerning challenges to a Tribe's assertion of authority (see § 131.8(c)(4)). It was suggested that the consultation process should provide for notice and opportunities for input (e.g., a hearing) to affected Tribes and States.

Response: EPA did not make changes to the proposed rule in response to these comments. However, subsequent to publishing the proposed rule EPA did reach agreement with the Department of the Interior regarding the procedures for conducting such consultations. The procedure established as the Secretary of the Interior's designees the Associate Solicitor, Division of Indian Affairs and the Deputy to the Assistant Secretary—Indian Affairs (Trust and Economic Development). EPA will forward a copy of the application and any documents asserting a competing or conflicting claim of authority to such designees as soon as possible. For most applications, an EPA-DOI conference will be scheduled from one to three weeks after the date the Associate Solicitor receives the application. Comments from the Interior Department will be primarily a discussion of the law applicable to the issue to assist EPA in its own deliberations. Responsibility for legal advice to the EPA Administrator or the other EPA decision makers will remain with the EPA General Counsel. EPA does not believe that the consultation process with the Department of Interior should involve notice and opportunities for input by States and Tribes because such parties are elsewhere provided appropriate opportunties to participate in EPA's review of Tribal authority.

Comment: Several comments suggested that, once EPA makes a determination regarding a Tribal application, EPA should provide notice of its decision to State, Tribal, and local governments and all commenters on the Tribal assertion of authority, and should publish a lists of Tribes treated as States in the **Federal Register.**

Response: EPA will take all reasonable means to advise interested parties of the decision reached regarding challenges to Tribal assertions of authority. At least, written notice will be provided to State(s) and other governmental entities sent notice of the Tribal application. In addition, the current water quality standards regulation (40 CFR part 131) requires that EPA annually publish a list of standards approval actions taken within the preceding year. EPA will expand that listing to include Indian Tribes qualifying for treatment as States in the preceding year.

Comment: EPA should clarify what happens if a Tribe is denied treatment as a State (§ 131.8 (c)(5)). Related comments indicated that it would be unfair to withdraw treatment as a State for failure to develop standards (or for any other reason) because States received unlimited assistance, both technical and dollars, and that withdrawal of recognition is counter to the Congressional mandate. Opposing views were offered that there should be a provision to withdraw recognition as a State from a Tribe.

Response: Rather than formally deny the Tribe's request, EPA will continue to work cooperatively with the Tribe in a continuing effort to resolve deficiencies in the application or the Tribal program so that Tribal recognition as a State may occur. EPA also concurs with the view that the intent of Congress and the EPA Indian Policy is to support Tribal governments in assuming authority to manage various water programs. As previously discussed in the response to comments on the capability criterion, no provision allowing EPA to withdraw a treatment as a State determination was added to the regulation. Authority already exists for EPA to re-assert control over certain water programs due to the failure of the State or Tribe to properly execute the programs. Specifically, in the water quality standards program, the Administrator has authority to promulgate Federal standards. Therefore, no change was needed in the regulation.

Comment: A number of comments suggested that EPA specify a timeframe or change the timeframe associated with the various steps in the application review procedure (§ 131.8(c)).

With regard to the review of the Tribe's assertion of authority (see § 131.8(c)(3)), various comments supported shortening the review period, lengthening the review period, and also adding a provision allowing an extension to the review period.

With regard to final determinations (see § 131.8(c)(5)), several comments suggested that EPA should complete its review and respond to Tribes within 60 days after receipt of an application. Other comments suggested that EPA should conduct a completeness review within 30 days of receipt of a Tribal application. In general, a number of comments advocated some time limit within which EPA would be required to complete the review process.

Response: No timeframes in the review procedure were changed in the regulation in response to comments. The time frames assigned are consistent with regulations promulgated for other EPA Water programs. Because EPA has no reasonable way to predetermine how complete initial applications for treatment as a State might be, what challenges might arise or how numerous or complex the issues might be, the Agency deems it inappropriate to attempt to establish timeframes that may not allow sufficient time for resolution. Also, several of the comments appear to be based on early experience with the "treatment as a State" process. EPA believes that as both Tribes, States, and EPA become more familiar with working together that the delays associated with approval of early applications will cease. Thus, EPA believes it unnecessary to establish additional deadlines in the regulation.

Other Comments on Treatment of Tribes as States

Comment: Several commenters suggested that, as part of the treatment as a State process, EPA require Indian Tribes to protect constitutional rights of non-Tribal members, that Tribes waive their sovereign immunity, and provide for voting rights for non-members.

Response: EPA notes that constitutional rights of both Indians and non-Indians exist without explicit recognition in a Federal regulation. The regulation provides a mechanism for a Tribe to demonstrate that it meets the criteria of CWA section 518(e). EPA believes it is inappropriate to consider any other factors. The issues raised by these comments are far beyond the purview of EPA. Such issues must be properly dealt with in the Courts or by Congress.

Comment: EPA should make clear that qualification for treatment as a State under one program is not dispositive for applications under other programs.

Response: That is the correct interpretation of this rule. As discussed previously, however, EPA expects that once a Tribe has qualified for one program, the key step toward assumption of other programs, in most cases, will be demonstrating appropriate capability.

2. Dispute Resolution Mechanism

Comments on CWA Section 510/EPA Authority

Comment: In the proposed rule, EPA announced its tentative determination that the provisions of section 510 of the CWA apply with equal force to water quality standards adopted by both States and Tribes, that is, nothing in the Act precludes either a State or a Tribe from adopting water quality standards more stringent than required by the Act. EPA expressed its view that, because of section 510, it may not disapprove either Tribal or State standards solely on the

grounds that the standard is too stringent, nor may it resolve a standards "dispute" by disapproving either a Tribal or State standard and Federally promulgating a less stringent standard.

Tribal commenters supported EPA's interpretation of the effect of section 510 on standards adopted by Tribes treated as States. State commenters disagreed with EPA's reading. In essence, these commenters argue that because section 510 is not one of those mentioned in section 518(e)(2) (which lists the sections of the CWA for which EPA is authorized to treat Tribes as States), EPA is precluded from reading section 510 as applying to standards set by Tribes. Therefore, Tribes may not set standards more stringent than required by section 303.

Response: EPA disagrees that the statute should be read in such a crabbed manner. A careful examination of the CWA sections referenced in section 518(e)(2) reveals that all of these provisions are CWA regulatory program elements or grant authorizations that are implemented by/funded for States. The sections of the CWA not mentioned in 518(e)(2), with very few exceptions, either do not involve States or are grant programs which have expired long ago.[2] Indeed, section 510 is virtually the only provision of the CWA that discusses a role for State governments that is not a regulatory program provision or grant.

Section 510 is instead a savings provision that indicates that existing State authority to regulate effluent discharges and/or set water quality standards is not preempted by the CWA, as long as the State standards/regulations are at least as stringent as required by the CWA. Thus, EPA does not believe that the failure of section 518(e)(2) to reference section 510 is conclusive.

Indeed, EPA believes that section 518(e) and its accompanying legislative history suggests that Congress intended for section 510 to apply to Tribes treated as States. For instance, Senator Burdick, a member of the Conference Committee on the Water Quality Act of 1987, stated that:

> The intent of the conferees was to assure that *Indian tribes would be able to exercise the same regulatory jurisdiction over water quality matters* with regard to waters within Indian jurisdiction that States have over their water. The conferees believe that *tribes should have the primary authority to set water quality standards to assure fishable and swimmable water and to satisy all beneficial uses.* The act also provides a mechanism for resolving any conflict between tribal standards and upstream uses or activities.

133 Cong. Reg. S 1018 (daily ed. Jan 21, 1987) (emphasis added). Were Tribes prohibited from establishing standards more stringent than minimally approvable by EPA, there would be little need for the dispute resolution mechanism required by section 518(e)(2) and established by today's regulation.

EPA also believes there are strong policy reasons to allow Tribes to set any water quality standards consistent with 40 CFR 131.10. First of all, it puts Tribes and States on an equal footing with respect to standard setting. There is no indication that Congress intended to treat Tribes as "second class" States under the CWA. Furthermore, treating Tribes as essentially equivalent to States is consistent with EPA's 1984 Indian Policy. Third, EPA believes it would be unfeasible to require Tribes to adopt the "minimum" standards allowed under Federal law. EPA has developed water quality criteria under the authority of section 304(a) of the CWA; these criteria, however, are only guidance for use by States in developing their own standards. The Federal recommendations are not enforceable absent State or Federal water quality standards implementing them under section 303. EPA has no procedures in place for defining a "minimum" level of standards beyond which a Tribe would not be allowed to go.

For all these reasons, EPA believes its interpretation of section 510 is reasonable and fully consistent with the legislative intent of Section 518.

Comment: EPA specifically invited comments regarding whether the Agency should attempt to establish scientific factors by which overly-stringent water quality criteria may be identified. EPA requested comments on this issue to address a pre-proposal comment that, CWA section 510 notwithstanding, EPA has the authority to disapprove overly stringent water quality criteria as a means of resolving a dispute between a State and a Tribe.

Numerous comments were received on this topic. Various commenters suggested that proposed water quality standards/criteria should not be considered scientifically defensible and thus should be disapproved when: (1) The controls necessary to meet the specified levels are not cost-effective, (2) the resulting effluent limits are beyond existing technology to measure or treat, (3) the criteria are based on inadequate data, (4) the criteria are more stringent than necessary to meet designated uses, and (5) the criteria are more stringent than natural background water quality.

Other commenters were vigorously opposed to any effort by EPA to restrict Tribal adoption of numeric criteria more stringent than required to meet the CWA's fishable and swimmable goals. A number of these comments asserted that Indian Tribes have legitimate needs to set criteria more stringent than State criteria and/or criteria required by the CWA (e.g., because of cultural/religious needs, because some Tribal members have high fish consumption rates, etc.). Several commenters pointed out that Tribes do not use cultural and religious needs to obtain political or economic ends and that, in fact, Tribes tend to be reluctant to deal in public arenas regarding cultural and religious needs. EPA notes that most comments which opposed setting limits on the stringency of Tribal criteria nevertheless also asserted that all criteria must be scientifically defensible and not more stringent than natural background water quality.

Response: EPA has made no changes to the proposal. As discussed in the preamble discussion to the proposal, EPA's water quality standards regulation already requires that criteria be developed based on scientifically defensible methods. EPA also does not advocate the adoption of water quality criteria more stringent than natural background water quality. However, EPA believes that criteria sufficiently stringent to meet the fishable and swimmable goals may not be disapproved under the CWA, on the grounds that such criteria are more stringent than natural background water quality. This belief is premised on the Agency's legal interpretation of CWA section 510 (discussed above). Thus, EPA does not require justification or other evaluation of the scientific merit of criteria which, based on a comparison with EPA's CWA section 304(a) criteria recommendations, meet or exceed levels of water quality necessary to support the fishable and swimmable goals.

In response to the comments suggesting that EPA may disapprove criteria based on economic and/or technological achievability factors, EPA notes that CWA section 303 explicitly requires that criteria be developed to support designated uses. Consideration of cost-effectiveness and achievability cannot override this requirement. Under the CWA, economic factors may be considered in conjunction with designating appropriate water uses.

In reviewing water quality standards submitted by States and Tribes, EPA will continue to evaluate the adequacy

[2] One notable exception is section 405, which establishes a Federal/State permit program for the disposal of sewage sludge. EPA has already determined that it is appropriate to treat Tribes as States for purposes of sludge programs, despite the omission of section 405 from section 518(e)(2).

of numeric criteria. Where EPA determines that such criteria are substantially more stringent than necessary to meet the fishable and swimmable goals of the CWA and are more stringent than presently existing water quality conditions, EPA will advise the State or Tribe, and affected adjacent States or Tribes of this finding. EPA will use best professional judgment to make such determinations. Such determinations will not be grounds for disapproval because, as explained above, EPA does not believe the Agency has the legal authority to disapprove a State or Tribal water quality criterion solely on the basis that EPA considers the standard to be more stringent than required by the Act.

Comment: EPA should set a time limit (e.g., 12 months, 18 months) after receipt of the request for dispute resolution within which a mutually acceptable agreement must be reached via either mediation or arbitration (§ 131.7(f) (1) and (2)). If after 18 months the parties do not seem close to an agreement the Agency should act to resolve the dispute. EPA has the authority to act in some situations (e.g., where an upstream discharger is violating the water quality standards in a downstream jurisdiction). Lack of time tables may allow disputes to continue for indefinite periods of time and to be intentionally prolonged by uncooperative parties.

Response: No time limit was added to the rule. While EPA intends to proceed as quickly as possible and to encourage the parties to the dispute to resolve it quickly and to establish informal time frames, the variety of potential disputes to be resolved would appear to preclude EPA specifying a single regulatory time limit. It is expected that some disputes will be resolved very quickly while others may take longer than the suggested 18 months. EPA believes it is better to obtain a reasonable agreement/decision than to arbitrarily establish a time frame within which an agreement/decision must be made.

EPA notes that the dispute resolution mechanism included in today's rule provides the Regional Administrator with several alternative courses of action. EPA believes that having a variety of alternative options may help to prevent delays because the Regional Administrator will be able to select the option most appropriate to the task and, where necessary, proceed from one option to another to conclude a dispute resolution action in a timely manner. An example would be where an arbitration panel is unable to reach a unanimous finding. In such a situation the Regional Administrator may, after a reasonable period of time, direct the panel to issue a nonbinding decision by majority vote.

EPA also believes that specifying such a time limit would be ineffective in those cases where at the end of the time limit the Agency would have insufficient authority to "act to resolve that dispute," because of CWA section 510 which, as discussed above, would prohibit EPA from disapproving standards solely on the basis that EPA considers the standard to be more stringent than required by the Act.

In some cases, EPA recognizes that the Agency will have authority to "act to resolve the dispute." An example would be a situation where a National Pollutant Discharge Elimination System (NPDES) permit for an upstream discharger does not provide for the attainment of the water quality standards for a downstream jurisdiction. EPA notes that the existing NPDES permitting and certification processes under the CWA may be utilized by the downstream jurisdiction to address such situations, and that today's rule does not alter or minimize the role of these processes in establishing appropriate permit limits that ensure attainment of water quality standards. States and Tribes are encouraged to participate in these permitting and certification processes rather than to wait for unreasonable consequences to occur.

In such cases, as was asserted in the proposal, EPA believes that the Agency has the authority to object to the upstream NPDES permit and, if necessary, to assume permitting authority. This authority was upheld in a case in which EPA assumed authority to issue a permit for a North Carolina discharge that, among other factors, did not meet Tennessee's downstream water quality standards (*Champion International Corp.* v. *EPA*, 850 F.2d 182 (4th Cir. 1988)).

EPA also anticipates that many of the disputes which will require EPA dispute resolution under 131.7 of today's rule will arise over such situations (i.e., in which an upstream discharge is creating alleged unreasonable consequences in a downstream jurisdiction). EPA recognizes that such situations are likely to occur, and that not all such situations are likely to be resolved to the satisfaction of all parties during the permit issuance and certification processes.

Where such cases proceed to dispute resolution, the Agency's first course of action will be to conduct a dispute resolution action as provided in 131.7 of today's rule and required by CWA section 518. In situations where the dispute resolution action does not result in a satisfactory agreement or other resolution (e.g., the upstream jurisdiction agrees to revise the limits of the permit), EPA would then give due consideration to any possible further Agency actions, where authorized by the CWA.

Comment: Several commenters supported EPA's statement that the Agency does not have the authority to compel parties to enter binding arbitration.

Response: EPA agrees with these comments and has retained the proposed language making entry into binding arbitration strictly a voluntary act.

Comments on the Selection of Mediators/Arbitrators

Comment: Both Tribes and States should have the opportunity to approve a mediator/arbitrator and to remove anyone showing bias.

Response: Section 131.7(f)(2) was modified (as discussed in section B—Changes to the Proposed Rule) to provide that arbitrators and arbitration panel members shall be selected to only include individuals that: (1) Are agreeable to all affected parties, (2) are knowledgeable concerning the requirements of the water quality standards program, (3) have a basic understanding of the political and economic interests of Tribes, and (4) is expected to fulfill the duties fairly and impartially. No such provision is included in § 131.7(f)(1) dealing with mediation. EPA did not provide for Tribal approval of mediators because: (1) EPA believes that such an approval process would provide too great an opportunity to delay the initiation of the mediation process, and (2) the role of the mediator is limited to acting as a neutral facilitator. That is significantly less of a role than being an arbitrator or member of an arbitration panel.

There is no prohibition against the Regional Administrator consulting with the parties regarding a mediator; there is just no requirement to do so. Although not specifically covered in the rule, EPA believes it is well within the powers of the Regional Administrator to remove any mediator or arbitrator for any reason including showing bias or unfairness, or taking illegal/unethical actions.

Comment: EPA should clarify how its Indian Policy, which is to give special consideration to Tribal interests, will affect its role in dispute resolution actions (see § 131.7(f)(ii)).

Response: EPA believes that its role in dispute resolution is to work with all parties to the dispute in an effort to reach an agreement that resolves the

dispute. The Agency shall not have a predisposition to support any party's position in disputes over water quality standards. Rather, EPA employees serving as mediators or arbitrators will serve outside the normal Agency chain of command and are expected to act in a neutral fashion. EPA notes that § 131.7(f)(1)(i) specifies that:

> Where the State and Tribe agree to participate in the dispute resolution process, mediation with the intent to establish Tribal-State agreements, consistent with the Clean Water Action section 518(d), shall normally be pursued as a first effort.

Although EPA believes that Tribes should be provided every opportunity to regulate water quality and to participate in environmental control programs, during dispute resolution actions the appointed mediator/arbitrator will act first and foremost as a neutral facilitator of discussions between parties.

Comments on the Default Procedure

Comment: Several comments were received recommending that EPA should clarify the default procedure in § 137.7(f)(3). For example, comments were received suggesting that EPA explain: (1) When it will be used, (2) how the procedure will help resolve disputes, (3) who will receive the Agency's recommendation, and (4) that the Agency will first encourage participation by all parties and use the default procedure only as a last resort. One comment suggested that the default procedure should be deleted because it would provide a means for any party to exclude itself from the resolution process.

Response: EPA intends that the default procedure come into play only as a last resort, after all other avenues of resolving the dispute have been exhausted. EPA believes that no change to the regulation is needed to reflect this intent. Section 131.7(f)(1)(i) already indicates that where the State and Tribe agree to participate, mediation shall be pursued as a first course of action. EPA also notes that § 131.7(f)(3) provides that the default procedure may only be used where one or more parties refuse to participate in either mediation or arbitration.

Since EPA believes it does not have the authority to force a Tribe or State into arbitration or mediation, or to overrule either a State or Tribe which adopts standards that are more stringent than necessary to meet the requirements of the Act, EPA developed this default procedure as a means to place before the public an Agency position/recommendation regarding resolution.

The default procedure is simply the Agency reviewing available information and issuing a recommendation for resolving the dispute. EPA's recommendation in this situation would have no enforceable impact. It is hoped that by publicly presenting an Agency position that either through public pressure or reconsideration by either of the affected parties that negotiations to resolve the dispute may continue. The provision as written clearly articulates that the default procedure is a last resort. Any written recommendation emanating from this process would be provided, at least, to all parties to the dispute. EPA sees no need to alter the rule or to delete the default procedure.

Comments on Definitions Used in the Dispute Resolution Mechanism

Comment: With regard to the question of who should be parties to the dispute resolution process (§ 131.7(g)(2)) EPA received diametrically opposed comments. Some comments suggested that EPA clarify that any person with a vested property interest must be a required party to the dispute resolution process while others suggested that EPA should limit the definition of parties to just the State and Tribe. Also, a comment was made that EPA should segregate the role of government regulators from that of permittees in the dispute resolution process.

Response: EPA does not concur with either view and retained the provision that the Regional Administrator may include other parties besides Tribes and States in the process. As stated in the preamble to the proposal, EPA believes that in some cases, inclusion of permittees or landowners subject to non-point source restrictions may be needed in order to resolve certain disputes. EPA notes that, in many cases, nonpoint source control actions (which may be necessary to implement a resolution to a dispute) are voluntary on the part of landowners. However, EPA believes that the Regional Administrator should retain discretion to decide when to include parties other than the Tribe and State. Only the Tribe and State are in a position to implement a change to water quality standards, and are thus the only parties which must be included in all dispute resolution actions. However, other parties may be included in certain cases upon a determination by the Regional Administrator. EPA notes that formal requests for a dispute resolution action may only be made by a State or Tribe (see § 131.7(c)).

Comment: EPA should define "unreasonable consequences" as it is a required condition for initiating a dispute resolution action (see § 131.7(b)(1)).

Response: EPA has not defined this term in the regulatory language. There are several reasons for this including: (1) It would be a presumptuous and unjustified Federal intrusion into local and State concerns for EPA to define what an unreasonable consequence might be as a basis for a national rule, (2) EPA does not want to unnecessarily narrow the scope of problems to be addressed by the dispute resolution mechanism, and (3) the possibilities of what might constitute an unreasonable consequence are so numerous as to defy a logical regulatory requirement. As stated in the preamble to the proposed rule, what might be viewed as an unreasonable consequence on a stream segment in a large, relatively unpopulated, water poor area with a single discharge would likely be viewed quite differently in or near an area characterized by numerous discharges and/or large water resources. EPA believes the Regional Administrator should retain discretion to decide when the consequences warrant initiating a dispute resolution action.

Comments on the Conditions Requiring EPA Dispute Resolution

Comment: A statement is needed on the criteria a Regional Administrator can use in denying a request for EPA dispute resolution.

Response: Section 131.7 (b), (c), and (d) describe the basis upon which a dispute may be initiated, the procedure for filing a request to initiate EPA action, and notice of the EPA decision to initiate a resolution action. The basis for denying a request would be that the requesting party is not able to fulfill any or all of the requirements established in § 131.7 (b) or (c). This was clear in the proposed rule and EPA has made no change.

Other Comments on the Dispute Resolution Mechanism

Comment: Section 131.7(b)(2) limits the dispute resolution mechanism to a dispute between Tribes and States. A comment was received that this should be expanded to cover disputes between two Tribes (or, by extension) between two States.

Response: The rule was written in this manner because section 518 of the Clean Water Act specified that a dispute resolution mechanism be developed to resolve disputes arising between a Tribe and a State. EPA believes that the requirement that State standards provide for the protection of downstream standards in § 131.10(b) of

the water quality standards regulation, supported by a 25 year history of informal negotiation of issues between States, provides sufficient basis for resolving disputes between two States or two Tribes. That informal process was described in the response to public comments on the basic standards regulation (48 FR 51400 and 51412, November 8, 1983).

Comment: What is the basis for requiring EPA approval of any State-Tribal agreement to resolve disputes under § 131.7(e)?

Response: EPA is charged with the responsibility of reviewing and either approving or disapproving State or Tribal-adopted standards as being consistent with the requirements of the Clean Water Act. Since EPA recommends that such agreements be entered into as a basic means of resolving disputes, that such agreements must comport with the requirements of the Act, and that the result of such agreements likely will influence standards, it appears necessary that the Agency approve such State-Tribal agreements. Also, the Act provides in section 518(d) that Tribal/State agreements in general for water quality management are to be approved by EPA. The water quality standards program is, in the view of EPA, part of a Tribe or State's overall water quality management plan.

Comment: It is not clear how two EPA Regions will work together when a reservation overlays more than one EPA Region.

Response: No regulatory change was made nor suggested. Often in the standards program issues cross Regional and State boundaries. The lead EPA region (determined via OMB circular A–95) is expected to routinely enlist the aid of other affected regions in resolving the dispute. EPA Headquarters will also oversee the process to ensure that the interests of both Regions are represented. Being designated as the lead Region for resolving a dispute or programmatic issue within EPA does not carry the license for the lead Region to act unilaterally. Rather it assigns the responsibility to ensure that the process leading to a decision is fair to all parties.

3. Establishing Water Quality Standards on Reservations

Comments on Tribal Options for Establishing Standards

Comment: In the preamble to the proposal, EPA discussed three acceptable options by which a Tribe may develop and adopt standards. These options are: (1) Negotiation of cooperative agreements with an adjoining State to apply the State's standards to the Indian lands, (2) incorporation of the standards from an adjacent State as the Tribe's own, with or without revision, or (3) independent Tribal adoption of water quality standards that may account for unique site-specific conditions and water body uses. These three options represent a range of resource commitments, with option 1 being the least resource intensive and option 3 the most intensive. One comment was received that the first option described (i.e., negotiating a cooperative agreement with an adjoining State to apply the State's standards to the Indian lands) is illegal.

Response: There is nothing inherently illegal about the option. If a Tribe, as a sovereign government, negotiates a cooperative agreement with the State to apply the State's standards to waters on the reservation, that is a legal and acceptable option for establishing CWA water quality standards on Indian lands. It is also legal if a Tribe uses standards of a State as a basis for Tribal standards (i.e., option 2). Nothing in option 1 suggests that the Tribe relinquish its sovereign powers or enforcement authority, or that the State can unilaterally apply its standards. The option is a legitimate means for an Indian Tribe to make use of the resources and experience of an adjacent State to quickly establish, at minimal cost, Tribal standards for the reservation.

Comment: In the preamble to the proposal, EPA indicated that, where Tribes qualify to be treated as States for purposes of water quality standards, the Agency would expect Tribal standards to be adopted and submitted to EPA within 180 days. Several comments were received on this deadline indicating that EPA should allow a longer period of time (e.g., because Tribes will be working to establish programs in other media besides water).

Response: The rationale for the deadline included in the proposal was that the 180 days was the same period of time provided to States to adopt standards under the 1972 Federal Water Pollution Control Act Amendments. However, the proposal also discussed a difference between the situation in 1972 for States versus the current situation for Tribes. In 1972, most States already had interstate water quality standards in place. By contrast, many Tribes have not yet developed any standards for reservation waters. EPA also believed 180 days to be an appropriate period of time because of the importance of establishing Tribal standards quickly in order to address any NPDES permit issues, section 401 certifications or nonpoint source management decisions. Without standards, Tribes are unable to influence such decisions. EPA notes that the proposal indicated that the Agency would be willing to grant extensions to the 180 day deadline if the Tribe could submit a reasonable rationale to the Regional Administrator.

The comments submitted on this issue have persuaded EPA that Tribes should be allowed longer than 180 days to adopt and submit standards to the Agency for review and approval. EPA believes that Tribes should be allowed a full three year review cycle to adopt and submit standards, similar to what States were originally provided when the standards program was created in 1965. The three year period will be measured from the date that EPA notifies the Tribe that the Tribe has qualified to be treated as a State for purposes of the standards program. EPA believes that this is an equitable arrangement and that Tribes should be allowed sufficient time to develop their programs and adopt appropriate standards for reservation waters. EPA reiterates that a Tribe is not required by sections 303 and 518 to seek treatment as a State and to establish Tribal standards; today's rule asserts only that Tribes who elect to do so will be expected to have such standards in place within three years.

EPA continues to believe that the development of Tribal standards can be an iterative process and that the option initially selected by the Tribe can change in subsequent triennial reviews. Initially, a Tribe may choose option 1 or 2. This initial decision does not preclude the Tribe from developing their own standards for subsequent triennial review cycles. Tribal standards may evolve from essentially a codification of existing State standards to a rule entirely of Tribal design.

Comments on Federal Assistance to Indian Tribes

Comment: Several comments were received concerning EPA's commitment to funding Tribal programs and providing technical assistance. Commenters suggested that the allocation of funds to implement standards programs must be apportioned equitably between States and Tribes and that EPA make a stronger commitment to technical and financial assistance to the Tribes. One suggestion was that EPA should be required to provide technical assistance necessary to bring Tribal programs into compliance with the regulations.

Response: The water quality standards program is not a grant

program, therefore no Federal funds are available directly from the standards program. Tribes are eligible to receive funds from other Agency grant programs and are encouraged to apply, particularly for section 106 program grants. EPA will provide as much technical assistance as the Agency's resources will allow. However, under the 1987 CWA Amendments the Agency received no additional resources to support Indian programs. Program grants can only be made available by reallocating resources from within current budget allocations. EPA set aside 3% of the total FY 1990 section 106 funds for Indian programs, and is planning a similar set-aside for FY 1991.

In a continuing effort to provide assistance to Tribes on the standards program, EPA issued a Reference Guide to Water Quality Standards for Indian Tribes, in January 1990. This document summarizes the standards review and adoption process including program requirements and the EPA review procedure. The document also identifies available information and contacts to assist Tribes in becoming familiar with the requirements of the water quality standards program.

The Agency also held a national meeting/seminar at which Tribes received information on the regulatory requirements, technical elements and procedures, and resource needs for developing water quality standards and implementing a standards program. The meeting was held on August 28–30, 1990 in Denver, Colorado. Further information about this workshop and plans for additional meetings may be obtained from the contact listed at the beginning of today's rule.

Comments on Extraterritorial Effects

Comment: A number of comments were received on this topic. One comment pointed out that the extraterritorial effects of discharges upstream of a State or Indian reservation should be considered during the standards review and adoption process to ensure that water quality standards provide for the attainment of standards in downstream jurisdictions. This comment also suggested that EPA needs to place more emphasis on the importance of such considerations. Suggestions for how such effects could be considered included requiring upstream jurisdictions to meet with downstream jurisdictions to discuss potential conflicts or, alternatively, that if EPA is to decide such issues, that the affected jurisdictions should be allowed to have input. Related comments were received (as discussed previously in the response to comments on CWA section 510/EPA Authority) asserting that EPA must, where needed, assume permitting authority for upstream discharges that violate the water quality standards of downstream jurisdictions. One comment was received advocating that the regulation be revised to prevent any extraterritorial effect of any Tribal regulatory action taken pursuant to CWA section 518.

Response: The existing standards program regulation, to which this rule is simply an amendment, includes the following requirement:

> In designating uses of a water body and the appropriate criteria for those uses, the State shall take into consideration the water quality standards of downstream waters and shall ensure that its water quality standards provide for the attainment and maintenance of the water quality standards of downstream waters.

(see § 131.10(b)).

EPA agrees with the comment which pointed out that, pursuant to the above regulatory requirement, extraterritorial effects of water quality standards should be considered during the standards review and adoption process. Once Tribes qualify for treatment as States and adopt standards pursuant to the requirements of today's rule, upstream jurisdictions would be required, when revising their standards, to provide for the attainment and maintenance of the downstream Tribal standards. Likewise, Tribes qualifying for treatment as States would be required to develop their standards to provide for the attainment and maintenance of the standards for downstream jurisdictions.

EPA recognizes that some extraterritorial effects of Tribal participation in the standards program are likely to occur, but the Agency believes that the number of such incidences will be small and the effects relatively minor. EPA believes that Congress also recognized the likelihood of such effects in passing CWA section 518, and that such effects were the driving force behind including in section 518 the requirement for EPA to establish a mechanism for resolution of disputes over water quality standards.

EPA emphasizes, however, that under the CWA there are a number of opportunities for such problems to be considered and resolved prior to being a subject for the dispute resolution mechanism included in today's rule.

First, as discussed above, States and Tribes qualifying for treatment as States are required under 40 CFR 131.10(b) to develop their standards to ensure the attainment and maintenance of downstream water quality standards. One opportunity to prevent such problems is thus to consider any potential extraterritorial effects during the water quality review process and to adopt standards consistent with the requirements of 40 CFR 131.10(b). EPA notes that the water quality standards review process includes opportunities for public participation (see the response to comments on public participation elsewhere in this section).

Second, permit limits under the National Pollutant Discharge Elimination System (NPDES) program (see CWA section 402) are required to be developed such that applicable water quality standards are achieved. The permit issuance process, which also includes public participation, thus presents a second opportunity to consider and resolve potential problems regarding extraterritorial effects of water quality standards.

Third, all permits are subject to certification under the requirements of CWA section 401. Section 401 requires that States and Tribes qualifying for treatment as States grant or deny "certification" for Federally permitted or licensed activities that may result in a discharge to waters of the United States. The decision to grant or deny certification is based on a State determination regarding whether the proposed activity will comply with, among other things, applicable water quality standards. States and Tribes qualifying for treatment as States may thus deny certification and prohibit the federal permitting or licensing agency from issuing a permit or license for activities that will violate water quality standards. Section 401 also allows a State or Tribe to participate in extraterritorial actions that will affect its waters if a Federal license or permit is involved (see section 401(a)(2)).

EPA has included the above discussion to indicate that there are a number of opportunities for resolving/preventing problems resulting from extraterritorial effects of water quality standards besides the dispute resolution mechanism included in today's rule. EPA believes that the dispute resolution mechanism will be most appropriately used as a final course of action after the other available courses of action have been exhausted.

Comments on EPA's Policy Regarding Applicable Standards Prior to Tribal Qualification for Treatment as a State

Comment: EPA received several comments regarding the policy wherein EPA stated that until a Tribe is treated as a State and establishes its own standards, or EPA otherwise decides in

consultation with the Tribe and State that a State lacks jurisdiction, that EPA will assume that existing State standards are applicable to reservation waters (see 54 FR 39104). State commenters generally supported EPA's statements, while Tribal commenters objected to the policy on a variety of grounds. First, certain Tribes noted that they may want to apply standards more stringent that State standards. Commenters also asserted that, to be consistent with EPA's Indian Policy, Federal, not State standards should apply on reservation waters; and that assuming State standards apply is at odds with the Agency's duty to promulgate. One commenter urged EPA to consider developing a program to promulgate Federal standards for reservation waters where the Tribe is unable or chooses not to adopt its own standards.

Response: In response to these comments, EPA wishes to further clarify the interim statements made in former General Counsel Jensen's September 9, 1988 letter. EPA agrees that, as a legal matter, there may be some question as to whether State standards apply to reservation waters. (See the discussion of the *Brendale* case above). The policy in question is not an assertion that State standards do necessarily apply as a matter of law. Rather it is a mere recognition that fully implementing a role for Tribes under the CWA will require a transition period. As explained earlier, there are no enforceable Federal standards that apply generally. EPA develops non-binding water quality criteria for use by States and Tribes in developing their standards. However, Federal standards do not apply unless EPA promulgates them upon a finding, pursuant to CWA section 303(c), that State/Tribal standards are inadequate or that new standards are otherwise necessary (see EPA's response to comments on Federal promulgation below).

Were EPA to simply ignore previously developed State standards in the interim period before Tribes develop their own standards, there would be a regulatory void which EPA believes would not be beneficial to reservation water quality. Thus, EPA believes that the Agency's policy is the best approach to an intractable problem, and one that best protects reservation environments in the interim period. Thus, it is fully consistent with EPA's Indian Policy. To the extent that the interim guidance given in the Jensen letter implies a different intent behind EPA's policy, today's response supersedes it. EPA will give serious consideration to Federal promulgation of water quality standards on Indian lands where it finds a particular need. Finally, in response to one specific comment, EPA agrees that where the Tribe endorses applying State standards in the interim, that EPA should ensure enforcement of those standards in permits issued to reservation dischargers.

Comments on EPA Promulgation of Water Quality Standards

Comment: Reflecting CWA section 303(c)(4), the water quality standards regulation specifies that the EPA Administrator may promulgate Federal water quality standards in any case: (1) Where the State standards do not meet the requirements of the Act, or (2) where the Administrator determines that new or revised standards are necessary (see 40 CFR 131.22). A number of comments were received regarding this authority, which will apply to Indian Tribes qualifying for treatment as a State, and potentially where a Tribe does not seek to assume the program and it is determined that State standards do not apply. Federal promulgation was discussed in the preamble to the proposal. It is not mentioned in the rule.

Comments on the preamble discussion generally expressed concern with EPA promulgation of standards. Included were suggestions that the Agency should clarify how it intends to determine that a Tribe has declined to seek qualification as a State. One comment suggested that such a clarification should include specific requirements/criteria and that such requirements/criteria should include lengthy discussions with the Tribe and a formal statement of declination from the Tribal government. In general, these comments cautioned EPA not to make the decision for Tribes. Several comments were received asserting that Federal promulgation should only be pursued as a last resort. One comment asserted that EPA promulgation is: (1) Contrary to the legal status of Indian lands being exempt from State laws, (2) unilaterally discretionary, and (3) contrary to EPA's Indian policy.

Other comments asserted that where EPA promulgates Federal standards the Agency should devote adequate resources to the task and not simply use adjacent State standards. One comment was received supporting EPA's acknowledgment of responsibility to promulgate standards.

Response: EPA's entire policy with respect to Federal promulgation is straightforward. EPA much prefers to work with the States and have them adopt standards which comply with CWA requirements. Where Federal promulgation is necessary to achieve CWA compliance, however, EPA will act. This same philosophy will apply to Indian Tribes qualifying for treatment as a State.

EPA did not add criteria to the rule to help determine when a Tribe has declined to seek treatment as a State. There is no required time frame for a Tribe to make that decision and there may be no pressing need for a Tribe to decide quickly.

Should EPA find it necessary to promulgate Federal standards for a Tribe or more than one Tribe (e.g., where necessary to address needed water quality based permit actions), EPA re-asserts its belief that the standards of the adjacent State will be a logical beginning step for EPA if for no other reason than the consistency required by 40 CFR 131.10(b). Practical considerations of available resources dictate that the Agency cannot and would not attempt to use attainability analyses or attempt to develop site-specific criteria. That is to say, a Federal proposed rulemaking would likely be very straightforward, all streams would be classified fishable/swimmable and the criteria to protect the uses would be those guidance values established by EPA under section 304(a) of the Act. Any changes in a final rule would depend on information submitted during the public comment period.

EPA concurs with the view that Federal promulgation should be a last resort. The Agency much prefers that Indian Tribes qualify for the standards program and adopt standards that comply with CWA requirements. However, Federal promulgation of water quality standards on Indian lands is authorized by the CWA (see CWA section 303(c)(4)). The question of Federal promulgation of standards for Indian Tribes has no relationship to Indian lands being exempt from State laws. A Federal promulgation results in establishing Federal standards—standards that cannot be amended by the jurisdiction to which they apply (although EPA generally withdraws such Federal standards upon adoption of fully acceptable State standards). We agree that the EPA Indian Policy dictates that Federal promulgation should only be pursued as a final course of action, as the Agency indicated in the preamble to the proposed rule. However, it does remain an option, where necessary, for setting standards for water resources located in Tribal lands.

Comments on Public Participation

Comment: Several comments were received regarding the processes for

public participation in water quality standards development. Commenters questioned whether public participation in the adoption of standards by Indian Tribes would be limited to just Indians, just residents of the reservation, or whether the hearing process would be open to interested parties in the areas surrounding the reservation. In general, these commenters requested additional clarification of public participation requirements.

Response: Public participation is not limited in any way to only residents of the area or just Indians. EPA expects that Tribes and States will make every reasonable effort to ensure that possible interested parties are made aware of the hearings on standards. This may require a direct written notice to State or Indian agencies or other Federal agencies. One of the responsibilities of EPA in reviewing State or Indian adopted standards is to assure that a full range of public participation occurred. EPA expects that State representatives will participate in public hearings on the reservation concerning water quality standards and that Tribal representatives will do the same in State hearings.

Standards adopted by either States or Indian Tribes that appear to be based on improper or unduly limited public participation may be disapproved by EPA solely on that basis since the Clean Water Act requires that standards may only be revised or adopted with public participation (see section 303(c)(1) of the Clean Water Act and §§ 131.6(e) and 131.20 (a) and (b) of the Water Quality Standards Regulation in 40 CFR part 131).

Comments on Enforcement of Standards

Comment: Several comments were received on enforcement of Tribal water quality standards. These commenters generally asserted that additional clarification should be provided by EPA. Several commenters noted that EPA should enforce Tribal standards. One commenter assumed that, based on the limited scope of CWA section 518, Tribal standards would be enforced by either EPA or the State.

Response: Enforcement of standards is not directly a component of the standards program regulation. Enforcement is the responsibility of the permitting agency or, in some cases, the agency which adopted the standards, which may be the Tribe, if it qualifies for treatment as a State for administering the NPDES permit program, or EPA or the State if the Tribe does not (see 40 CFR 123.1(h)). Where Tribes lack the requisite criminal enforcement authority, EPA may exercise certain criminal enforcement powers on behalf of Indian Tribes that seek to operate NPDES or State Sludge Management Programs.

4. Other Comments

Comments on Trust Responsibility

Comment: EPA received several comments regarding its assertion that the "Federal trust responsibility" owed to Indian Tribes, as it applies to EPA actions under the CWA, is defined by the terms of the CWA. EPA went on to explain that "the Agency's responsibility is clearly to attempt to resolve * * * disputes [between States and Tribes over standards] consistent with the provision of the [CWA]." 54 FR 39101.

Certain commenters asserted that EPA should explicitly clarify whether the CWA defines any trust obligations to tribes and, if so, where and how that obligation will be expressed. In particular, EPA should explicitly define how the trust responsibility will affect its role in the dispute resolution process. Other commenters not only asked for clarification, but asserted that EPA must state that the Federal-Tribal trust relationship "exists independently of and informs EPA decision making" concerning the CWA and State-Tribal disputes. Still another commenter asked EPA to clarify that the proposed regulations are not to be read as modifying or abrogating EPA's trust responsibility.

Response: EPA believes that the preamble to the proposed rule stated the applicable principles clearly and that no further clarification is needed. EPA recognizes the responsibility owed by the Federal government as trustee for the affairs of Indian Tribes. However, the Agency does not believe the trust responsibility precludes EPA from playing an impartial role in the dispute resolution process.

Furthermore, EPA believes that the concerns of both Tribal and State commenters regarding the trust responsibility's impact on the dispute resolution process and EPA's other activities under today's regulation are likely unfounded. If so appointed by the Regional Administrator, EPA employees will be acting solely as mediators or non-binding arbitrators in the process. Thus, they will not have the power to impose a binding decision on either the Tribe or the State absent prior consent from both sides. Furthermore, if both the Tribe and the State have adopted valid water quality standards approved by EPA, the dispute resolution process would not be able to supersede those standards. Thus, the "trust responsibility" would not affect the outcome of the dispute resolution process and any EPA statements regarding its overall scope would be strictly hypothetical. By the same token, EPA recognizes its duty to work with Tribes who wish to develop and adopt standards and to eliminate all potential barriers to Tribes accomplishing this goal.

Comments on Definitions Proposed for Section 131.3

Comment: EPA should change the proposed definition of a Tribe in section 131.3 to mean any Indian Tribe, band, group, or community recognized by the Secretary of the Interior and exercising governmental powers and functions over a Federal Indian Reservation.

Response: No change was made. The rule reflects the statutory definition.

Comment: What role do standards play in subsurface flows emanating from one jurisdiction that flow into and impact the surface waters of another jurisdiction?

Response: Notwithstanding the strong language in the legislative history of the Clean Water Act to the effect that the Act does not grant EPA authority to regulate pollution of groundwaters, EPA and most courts addressing the issues have recognized two limited instances where, for the purpose of protecting surface waters and their uses, EPA may exercise authorities that may affect underground waters. First, the Act requires NPDES permits for discharges to groundwater where there is a direct hydrological connection between groundwaters and surface waters. In these situations, the affected groundwaters are not considered "waters of the United States" but discharges to them are regulated because such discharges are effectively discharges to the directly connected surface waters. Second, it is EPA's long-established position that water quality standards are required for certain underground segments of surface waters. See *Kentucky* v. *Train*, 9 ERC 1280 (E.D. Kentucky 1972). In such streams, the subterranean component must be sufficiently stream-like so as to possibly allow the passage of fish and other aquatic organisms from a surface segment of the stream into the underground segment.

Comments on Water Quantity Rights

Comment: Several comments were received regarding water quantity issues. These comments generally asserted that the statement in the preamble to the proposal (54 FR 39101) which indicates that all section 518

programs shall be carried out in accordance with CWA section 101(g) should be added to the final regulation. CWA section 101(g) asserts that nothing in the CWA shall supersede or abrogate rights to quantities of water which have been established by any State.

Response: Since sections 101(g) and 518(a) are clear in the Clean Water Act, EPA believes it unnecessary to restate such language in the regulation. Nevertheless, a brief reference is made to them in § 131.4 of these regulations.

Comments on Applicability of Standards to Federal Projects

Comment: EPA should clarify that Tribal water quality standards cannot be applied to Federal projects.

Response: EPA disagrees with that view. Federal agencies are required to comply to the same extent as other persons or entities with duly adopted State standards (see CWA section 313). This will apply likewise to any standards duly adopted by Indian Tribes that EPA determines qualify for treatment as a State for the standards program.

D. Regulatory Flexibility Act

For the reasons stated in the preamble to the proposed rule, 54 FR 39105, September 22, 1989, EPA concludes that this rule will not have a significant impact on a substantial number of small entities, and thus a Regulatory Flexibility Analysis is unnecessary.

Comments on EPA's Determination Regarding Regulatory Flexibility Act Requirements

Comment: Within one reservation in Utah a substantial number of small businesses may be required to provide additional treatment of wastewaters to meet Tribal water quality standards. EPA should investigate and acknowledge this result before asserting a lack of substantial impact on small entities.

Response: As stated in the proposal, EPA recognizes that an Indian Tribe which qualifies for treatment as a State could adopt water quality standards that might impose additional treatment requirements on discharges with NPDES permits. However, EPA continues to believe that such situations will be rare and that the rule will not have a significant impact on a substantial number of small entities.

While it is entirely possible that some small entities in Utah may be affected by a Tribe adopting water quality standards, it is difficult for EPA to make conclusive findings when the Agency does not know if any Tribe in Utah will attempt to qualify for treatment as a State or what standards may be adopted. EPA also has no evidence to support a conclusion that Tribal standards will necessarily require more stringent NPDES permit limits than contained in existing permits.

In adopting standards, EPA notes that economic consequences are appropriately considered in setting the use classifications on a water body. For example, economics may be used as a basis for not designating uses in support of the fishable-swimmable goal cited in section 101(a)(2) of the Act (see §§ 131.10 (a) and (j) of the Water Quality Standards Regulation, 40 CFR part 131). In addition, the water quality standards regulation provides for the allowance of variances to standards based on substantial and widespread economic and social impact (see §§ 131.10(6) and 131.13).

E. Paperwork Reduction Act

The information collection requirements in this rule were approved by the Office of Management and Budget under the Paperwork Reduction Act, 44 U.S.C. 3501 *et seq*, on October 17, 1989, approval number 2040–0049, with an expiration date of October 31, 1992. A copy of the Information Collection Request document may be obtained from the Information Policy Branch (PM–223Y), Environmental Protection Agency, 401 M Street, SW., Washington, DC, 20460, or by calling (202)–475–9498.

F. Regulatory Impact Analysis

Under Executive Order 12291, EPA must judge whether a regulation is "major" and therefore subject to the requirement of a Regulatory Impact Analysis. It should be noted that the basic water quality standards regulation published at 48 FR 51400 on November 8, 1983 contains a finding that the regulation is not a major rule under Executive Order 12291. It is difficult for EPA to assess the net cost of this amendment to the basic regulation because of the offsetting character of the basic provisions of the standards program and the fact that there is no good means of estimating how many Tribes may seek to qualify for treatment as a State. While qualifying for treatment as a State will place burdens on the Tribes, the basic regulation also provides the ability of the Tribes to determine the attainability of stream uses, to set site-specific criteria sufficient to protect those uses, and to focus limited Tribal resources on reviewing or adopting standards on priority water bodies. For these reasons, the Agency judges this amendment to the basic standards regulation not to be a major rule.

List of Subjects in 40 CFR Part 131

Indian reservation water quality standards, Water pollution control, Water quality standards.

Dated: November 22, 1991.

William K. Reilly,

Administrator.

For the reasons set out in the **SUPPLEMENTARY INFORMATION** section, part 131, subpart A, of title 40 of the Code of Federal Regulations is amended as follows:

1. The authority citation for part 131 continues to read as follows:

Authority: Clean Water Act, Pub. L. 92–500, as amended; 33 U.S.C. 1251 *et seq.*

2. Section 131.3 is amended by revising paragraph (j) and adding paragraphs (k) and (l) to read as follows:

§ 131.3 Definitions.

* * * * *

(j) *States* include: The 50 States, the District of Columbia, Guam, the Commonwealth of Puerto Rico, Virgin Islands, American Samoa, the Trust Territory of the Pacific Islands, the Commonwealth of the Northern Mariana Islands, and Indian Tribes that EPA determines qualify for treatment as States for purposes of water quality standards.

(k) *Federal Indian Reservation, Indian Reservation,* or *Reservation* means all land within the limits of any Indian reservation under the jurisdiction of the United States Government, notwithstanding the issuance of any patent, and including rights-of-way running through the reservation."

(l) *Indian Tribe* or *Tribe* means any Indian Tribe, band, group, or community recognized by the Secretary of the Interior and exercising governmental authority over a Federal Indian reservation.

3. Section 131.4 is revised to read as follows:

§ 131.4 State authority.

(a) States (as defined in § 131.3) are responsible for reviewing, establishing, and revising water quality standards. As recognized by section 510 of the Clean Water Act, States may develop water quality standards more stringent than required by this regulation. Consistent with section 101(g) and 518(a) of the Clean Water Act, water quality standards shall not be construed to supersede or abrogate rights to quantities of water.

(b) States (as defined in § 131.3) may issue certifications pursuant to the requirements of Clean Water Act section 401. Revisions adopted by States

shall be applicable for use in issuing State certifications consistent with the provisions of § 131.21(c).

(c) Where EPA determines that a Tribe qualifies for treatment as a State for purposes of water quality standards, the Tribe likewise qualifies for treatment as a State for purposes of certifications conducted under Clean Water Act section 401.

4. In § 131.5 paragraphs (a) through (e) are redesignated as paragraphs (a)(1) through (a)(5), the introductory paragraph is designated as paragraph (a), and a new paragraph (b) is added to read as follows:

§ 131.5 EPA authority.

* * * * *

(b) Section 401 of the Clean Water Act authorizes EPA to issue certifications pursuant to the requirements of section 401 in any case where a State or interstate agency has no authority for issuing such certifications.

5. Section 131.7 is added to read as follows:

§ 131.7 Dispute resolution mechanism.

(a) Where disputes between States and Indian Tribes arise as a result of differing water quality standards on common bodies of water, the lead EPA Regional Administrator, as determined based upon OMB circular A–105, shall be responsible for acting in accordance with the provisions of this section.

(b) The Regional Administrator shall attempt to resolve such disputes where:

(1) The difference in water quality standards results in unreasonable consequences;

(2) The dispute is between a State (as defined in § 131.3(j) but exclusive of all Indian Tribes) and a Tribe which EPA has determined qualifies to be treated as a State for purposes of water quality standards;

(3) A reasonable effort to resolve the dispute without EPA involvement has been made;

(4) The requested relief is consistent with the provisions of the Clean Water Act and other relevant law;

(5) The differing State and Tribal water quality standards have been adopted pursuant to State and Tribal law and approved by EPA; and

(6) A valid written request has been submitted by either the Tribe or the State.

(c) Either a State or a Tribe may request EPA to resolve any dispute which satisfies the criteria of paragraph (b) of this section. Written requests for EPA involvement should be submitted to the lead Regional Administrator and must include:

(1) A concise statement of the unreasonable consequences that are alleged to have arisen because of differing water quality standards;

(2) A concise description of the actions which have been taken to resolve the dispute without EPA involvement;

(3) A concise indication of the water quality standards provision which has resulted in the alleged unreasonable consequences;

(4) Factual data to support the alleged unreasonable consequences; and

(5) A statement of the relief sought from the alleged unreasonable consequences.

(d) Where, in the Regional Administrator's judgment, EPA involvement is appropriate based on the factors of paragraph (b) of this section, the Regional Administrator shall, within 30 days, notify the parties in writing that he/she is initiating an EPA dispute resolution action and solicit their written response. The Regional Administrator shall also make reasonable efforts to ensure that other interested individuals or groups have notice of this action. Such efforts shall include but not be limited to the following:

(1) Written notice to responsible Tribal and State Agencies, and other affected Federal agencies,

(2) Notice to the specific individual or entity that is alleging that an unreasonable consequence is resulting from differing standards having been adopted on a common body of water,

(3) Public notice in local newspapers, radio, and television, as appropriate,

(4) Publication in trade journal newsletters, and

(5) Other means as appropriate.

(e) If in accordance with applicable State and Tribal law an Indian Tribe and State have entered into an agreement that resolves the dispute or establishes a mechanism for resolving a dispute, EPA shall defer to this agreement where it is consistent with the Clean Water Act and where it has been approved by EPA.

(f) EPA dispute resolution actions shall be consistent with one or a combination of the following options:

(1) *Mediation.* The Regional Administrator may appoint a mediator to mediate the dispute. Mediators shall be EPA employees, employees from other Federal agencies, or other individuals with appropriate qualifications.

(i) Where the State and Tribe agree to participate in the dispute resolution process, mediation with the intent to establish Tribal-State agreements, consistent with Clean Water Act section 518(d), shall normally be pursued as a first effort.

(ii) Mediators shall act as neutral facilitators whose function is to encourage communication and negotiation between all parties to the dispute.

(iii) Mediators may establish advisory panels, to consist in part of representatives from the affected parties, to study the problem and recommend an appropriate solution.

(iv) The procedure and schedule for mediation of individual disputes shall be determined by the mediator in consultation with the parties.

(v) If formal public hearings are held in connection with the actions taken under this paragraph, Agency requirements at 40 CFR 25.5 shall be followed.

(2) *Arbitration.* Where the parties to the dispute agree to participate in the dispute resolution process, the Regional Administrator may appoint an arbitrator or arbitration panel to arbitrate the dispute. Arbitrators and panel members shall be EPA employees, employees from other Federal agencies, or other individuals with appropriate qualifications. The Regional administrator shall select as arbitrators and arbitration panel members individuals who are agreeable to all parties, are knowledgeable concerning the requirements of the water quality standards program, have a basic understanding of the political and economic interests of Tribes and States involved, and are expected to fulfill the duties fairly and impartially.

(i) The arbitrator or arbitration panel shall conduct one or more private or public meetings with the parties and actively solicit information pertaining to the effects of differing water quality permit requirements on upstream and downstream dischargers, comparative risks to public health and the environment, economic impacts, present and historical water uses, the quality of the waters subject to such standards, and other factors relevant to the dispute such as whether proposed water quality criteria are more stringent than necessary to support designated uses, more stringent than natural background water quality or whether designated uses are reasonable given natural background water quality.

(ii) Following consideration of relevant factors as defined in paragraph (f)(2)(i) of this section, the arbitrator or arbitration panel shall have the authority and responsibility to provide all parties and the Regional Administrator with a written recommendation for resolution of the

dispute. Arbitration panel recommendations shall, in general, be reached by majority vote. However, where the parties agree to binding arbitration, or where required by the Regional Administrator, recommendations of such arbitration panels may be unanimous decisions. Where binding or non-binding arbitration panels cannot reach a unanimous recommendation after a reasonable period of time, the Regional Administrator may direct the panel to issue a non-binding decision by majority vote.

(iii) The arbitrator or arbitration panel members may consult with EPA's Office of General Counsel on legal issues, but otherwise shall have no *ex parte* communications pertaining to the dispute. Federal employees who are arbitrators or arbitration panel members shall be neutral and shall not be predisposed for or against the position of any disputing party based on any Federal Trust responsibilities which their employers may have with respect to the Tribe. In addition, arbitrators or arbitration panel members who are Federal employees shall act independently from the normal hierarchy within their agency.

(iv) The parties are not obligated to abide by the arbitrator's or arbitration panel's recommendation unless they voluntarily entered into a binding agreement to do so.

(v) If a party to the dispute believes that the arbitrator or arbitration panel has recommended an action contrary to or inconsistent with the Clean Water Act, the party may appeal the arbitrator's recommendation to the Regional Administrator. The request for appeal must be in writing and must include a description of the statutory basis for altering the arbitrator's recommendation.

(vi) The procedure and schedule for arbitration of individual disputes shall be determined by the arbitrator or arbitration panel in consultation with parties.

(vii) If formal public hearings are held in connection with the actions taken under this paragraph, Agency requirements at 40 CFR 25.5 shall be followed.

(3) *Dispute Resolution Default Procedure.* Where one or more parties (as defined in paragraph (g) of this section) refuse to participate in either the mediation or arbitration dispute resolution processes, the Regional Administrator may appoint a single official or panel to review available information pertaining to the dispute and to issue a written recommendation for resolving the dispute. Review officials shall be EPA employees, employees from other Federal agencies, or other individuals with appropriate qualifications. Review panels shall include appropriate members to be selected by the Regional Administrator in consultation with the participating parties. Recommendations of such review officials or panels shall, to the extent possible given the lack of participation by one or more parties, be reached in a manner identical to that for arbitration of disputes specified in paragraphs (f)(2)(i) through (f)(2)(vii) of this section.

(g) *Definitions.* For the purposes of this section:

(1) *Dispute Resolution Mechanism* means the EPA mechanism established pursuant to the requirements of Clean Water Act section 518(e) for resolving unreasonable consequences that arise as a result of differing water quality standards that may be set by States and Indian Tribes located on common bodies of water.

(2) *Parties* to a State-Tribal dispute include the State and the Tribe and may, at the discretion of the Regional Administrator, include an NPDES permittee, citizen, citizen group, or other affected entity.

6. Section 131.8 is added to read as follows:

§ 131.8 Requirements for Indian Tribes to be treated as States for purposes of water quality standards.

(a) The Regional Administrator, as determined based on OMB Circular A–105, may treat an Indian Tribe as a State for purposes of the water quality standards program if the Tribe meets the following criteria:

(1) The Indian Tribe is recognized by the Secretary of the Interior and meets the definitions in § 131.3 (k) and (l),

(2) The Indian Tribe has a governing body carrying out substantial governmental duties and powers,

(3) The water quality standards program to be administered by the Indian Tribe pertains to the management and protection of water resources which are within the borders of the Indian reservation and held by the Indian Tribe, within the borders of the Indian reservation and held by the United States in trust for Indians, within the borders of the Indian reservation and held by a member of the Indian Tribe if such property interest is subject to a trust restriction on alienation, or otherwise within the borders of the Indian reservation, and

(4) The Indian Tribe is reasonably expected to be capable, in the Regional Administrator's judgment, of carrying out the functions of an effective water quality standards program in a manner consistent with the terms and purposes of the Act and applicable regulations.

(b) Requests by Indian Tribes for treatment as States for purposes of water quality standards should be submitted to the lead EPA Regional Administrator. The application shall include the following information:

(1) A statement that the Tribe is recognized by the Secretary of the Interior.

(2) A descriptive statement demonstrating that the Tribal governing body is currently carrying out substantial governmental duties and powers over a defined area. The statement shall:

(i) Describe the form of the Tribal government;

(ii) Describe the types of governmental functions currently performed by the Tribal governing body such as, but not limited to, the exercise of police powers affecting (or relating to) the health, safety, and welfare of the affected population, taxation, and the exercise of the power of eminent domain; and

(iii) Identify the source of the Tribal government's authority to carry out the governmental functions currently being performed.

(3) A descriptive statement of the Indian Tribe's authority to regulate water quality. The statement shall include:

(i) A map or legal description of the area over which the Indian Tribe asserts authority to regulate surface water quality;

(ii) A statement by the Tribe's legal counsel (or equivalent official) which describes the basis for the Tribes assertion of authority;

(iii) A copy of all documents such as Tribal constitutions, by-laws, charters, executive orders, codes, ordinances, and/or resolutions which support the Tribe's assertion of authority; and

(iv) an identification of the surface waters for which the Tribe proposes to establish water quality standards.

(4) A narrative statement describing the capability of the Indian Tribe to administer an effective water quality standards program. The narrative statement shall include:

(i) A description of the Indian Tribe's previous management experience including, but not limited to, the administration of programs and services authorized by the Indian Self-Determination and Education Assistance Act (25 U.S.C. 450 *et seq.*), the Indian Mineral Development Act (25 U.S.C. 2101 *et seq.*), or the Indian

Sanitation Facility Construction Activity Act (42 U.S.C. 2004a);

(ii) A list of existing environmental or public health programs administered by the Tribal governing body and copies of related Tribal laws, policies, and regulations;

(iii) A description of the entity (or entities) which exercise the executive, legislative, and judicial functions of the Tribal government;

(iv) A description of the existing, or proposed, agency of the Indian Tribe which will assume primary responsibility for establishing, reviewing, implementing and revising water quality standards;

(v) A description of the technical and administrative capabilities of the staff to administer and manage an effective water quality standards program or a plan which proposes how the Tribe will acquire additional administrative and technical expertise. The plan must address how the Tribe will obtain the funds to acquire the administrative and technical expertise.

(5) Additional documentation required by the Regional Administrator which, in the judgment of the Regional Administrator, is necessary to support a Tribal request for treatment as a State.

(6) Where the Tribe has previously qualified for treatment as a State under a Clean Water Act or Safe Drinking Water Act program, the Tribe need only provide the required information which has not been submitted in a previous treatment as a State application.

(c) Procedure for processing an Indian Tribe's application for treatment as a State.

(1) The Regional Administrator shall process an application of an Indian Tribe for treatment as a State submitted pursuant to § 131.8(b) in a timely manner. He shall promptly notify the Indian Tribe of receipt of the application.

(2) Within 30 days after receipt of the Indian Tribe's application for treatment as a State, the Regional Administrator shall provide appropriate notice. Notice shall:

(i) Include information on the substance and basis of the Tribe's assertion of authority to regulate the quality of reservation waters; and

(ii) Be provided to all appropriate governmental entities.

(3) The Regional Administrator shall provide 30 days for comments to be submitted on the Tribal application. Comments shall be limited to the Tribe's assertion of authority.

(4) If a Tribe's asserted authority is subject to a competing or conflicting claim, the Regional Administrator, after consultation with the Secretary of the Interior, or his designee, and in consideration of other comments received, shall determine whether the Tribe has adequately demonstrated that it meets the requirements of § 131.8(a)(3).

(5) Where the Regional Administrator determines that a Tribe meets the requirements of this section, he shall promptly provide written notification to the Indian Tribe that the Tribe has qualified to be treated as a State for purposes of water quality standards and that the Tribe may initiate the formulation and adoption of water quality standards approvable under this part.

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federal register

Thursday
December 12, 1991

Part IV

Environmental Protection Agency

Federal Agency Hazardous Waste Compliance Docket; Notice

ENVIRONMENTAL PROTECTION AGENCY

[FRL-4028-6]

Federal Agency Hazardous Waste Compliance Docket

AGENCY: Environmental Protection Agency.

ACTION: Notice of fifth update of the Federal Agency Hazardous Waste Compliance Docket pursuant to CERCLA section 120(c).

SUMMARY: Section 120(c) of the Comprehensive Environmental Response, Compensation and Liability Act of 1980 (CERCLA), as amended by the Superfund Amendments and Reauthorization Act of 1986 (SARA), requires the Environmental Protection Agency (EPA) to establish a Federal Agency Hazardous Waste Compliance Docket that contains certain information regarding Federal facilities that manage hazardous waste or from which hazardous substances may be or have been released. (As defined by CERCLA 101(22), a release is any spilling, leaking, pumping, pouring, emitting, emptying, discharging, injecting, escaping, leaching, dumping, or disposing into the environment.) CERCLA requires that the docket be updated every 6 months as new facilities are reported to EPA by Federal agencies. The following list identifies the Federal facilities to be included in the fifth update of the docket (i.e., facilities not previously listed on the docket and reported to EPA since the last update to the docket, 56 FR 49328, September 27, 1991, which was current as of April 1, 1991). EPA policy specifies that for each Federal facility that is included on the docket during an update, the responsible Federal agency must complete a preliminary assessment (PA) and, if warranted, a site inspection (SI), within 18 months of publication of this notice. Such remedial site evaluation activities will help determine whether the facility should be included on the National Priorities List (NPL) and will provide EPA and the public with valuable information about the facility. In addition to the docket update list, this notice includes a section comprising revisions (i.e., corrections and deletions) to the previous docket list and subsequent updates. At the time of publication of this notice, the new total number of Federal facilities listed on the docket is 1652.

DATES: This list is current as of August 23, 1991.

FOR FURTHER INFORMATION CONTACT: Federal Facilities Docket Hotline. Telephone: (800) 548-1016 toll free, or (703) 883-8577.

SUPPLEMENTARY INFORMATION:

Table of Contents

I. Introduction

The Federal Agency Hazardous Waste Compliance Docket ("docket") was required to be established under section 120(c) of CERCLA, 42 U.S.C. 9620(c), as amended by SARA. The docket contains information on Federal facilities that is submitted by Federal agencies to the U.S. Environmental Protection Agency ("EPA" or "the Agency") under sections 3005, 3010, and 3016 of RCRA, 42 U.S.C. 6925, 6930, and 6937, and under Section 103 of CERCLA, 42 U.S.C. 9603. Specifically, RCRA section 3005 establishes a permitting system for certain hazardous waste treatment, storage, and disposal (TSD) facilities; RCRA section 3010 requires waste generators, transporters, and TSD facilities to notify EPA of their hazardous waste activities; and RCRA section 3016 requires Federal agencies to submit biennially to EPA an inventory of hazardous waste sites that the Federal agencies own or operate. CERCLA section 103(a) requires notification to the National Response Center (NRC) of a release; CERCLA section 103(c) requires reporting the existence of certain facilities and of known or suspected releases of hazardous substances at such facilities.

The docket serves, among others, three major purposes: (1) To identify the universe of Federal facilities that must be evaluated to determine whether they pose a risk to human health and the environment sufficient to warrant inclusion on the NPL; (2) to compile and maintain the information submitted to EPA on these facilities under the provisions listed in section 120(c) of CERCLA; and (3) to provide a mechanism to make this information available to the public.

The initial list of Federal facilities to be included in the docket was published on February 12, 1988 (53 FR 4280). The first update was published on November 16, 1988 (53 FR 46364). The second update was published on December 15, 1989 (54 FR 51472). The third update was published on August 22, 1990 (55 FR 34492). The fourth update was published on September 27, 1991 (56 FR 49328). The fifth update of the docket is being published today.

Today's notice is divided into three major sections: (1) Corrections, (2) deletions, and (3) additions. The docket corrections section lists changes to information on facilities already listed on the docket. The deletions section lists facilities that EPA is deleting from the docket. The additions section lists newly identified facilities that have been reported to EPA since the last update and are now being included on the docket.

The information submitted to EPA on each Federal facility is contained in the docket repository located in the EPA Regional Office of the region where the facility is found. (See 53 FR 4280 (1988) for a description of the information required under these provisions.) Each repository contains the documents submitted to EPA under the reporting provisions (and correspondence relevant to the reporting provisions) for each facility. A complete national index of the information found in the Regional docket repositories is maintained at EPA Headquarters in Washington, DC, and made available to the public. The index for each Region is available for public review at each Regional repository. Contact the Federal Facilities Docket Hotline (800-548-1016) for information on repository locations and arrangements for reviewing and copying specific documents.

II. Revisions to the Previous Docket

1. Corrections

Necessary changes to correct the previous docket were identified by both EPA and Federal agencies. These changes vary from simple address and spelling changes to facility name and ownership corrections. Many are simply typographical or typesetting errors. For each facility with a correction, the original entry as it appeared in the February 12, 1988, notice; the November 16, 1988, update; the December 15, 1989, update; the August 22, 1990 update; or the September 27, 1991, update is shown directly above the corrected entry for easy comparison.

2. Deletions

Today, 94 facilities are being deleted from the docket for various reasons, such as incorrect reporting of hazardous waste activity, change in Federal ownership, and exemption as a small quantity generator (SQG) under RCRA (40 CFR 262.44). Facilities being deleted will no longer be subject to the requirements of CERCLA section 120(d).

3. Additions

Today, 144 facilities are being added to the docket primarily because of new information obtained by EPA (e.g., recent reporting of a facility pursuant to RCRA sections 3005, 3010, or 3016 or CERCLA section 103). In some cases, facilities were inadvertently omitted from the initial list or prior updates. For all facilities being added in this section, it is EPA's policy that the responsible agency must complete the required PA, and, if warranted, an SI, within 18 months from the date of this publication.

Of the 144 facilities being added to the docket, 4 are facilities which have reported the release of a reportable quantity (RQ) of a hazardous substance to the Emergency Response Notification System (ERNS). ERNS is a national computer database and retrieval system which stores information on releases of oil and hazardous substances. Under section 103(a) of CERCLA, a facility is required to report to the NRC the release of a hazardous substance in a quantity which equals or exceeds the established RQ. Release reports received by the NRC, the U.S. Coast Guard, and EPA are electronically transmitted to the Transportation Systems Center at the U.S. Department of Transportation (DOT) where they become part of the ERNS database. Facilities being added to the docket and facilities already listed on the docket which have an ERNS report have the notation of "103(a)" in the "Reporting Mechanism" column.

It is EPA's policy generally not to list on the docket facilities which are SQGs and have never produced more than 1,000 kg of hazardous waste in any month. However, if a facility has ever generated more than 1,000 kg of hazardous waste in any month, (i.e., is an episodic generator), it will be added to the docket. In addition, the Agency believes that facilities which are SQGs but have reported releases under section 103, or hazardous waste activities pursuant to another reporting mechanism, should be listed on the docket. EPA believes that such facilities should undergo remedial site evaluation activities, such as a PA and, where appropriate, an SI. All such facilities will be listed on the docket regardless of whether they are SQGs pursuant to RCRA. As a result, some of the facilities that EPA is today adding to the docket are SQGs which had not been previously listed on the docket but have reported releases or hazardous waste activities to EPA under another reporting provision.

In the process of compiling the documents for the Regional repositories, EPA identified a number of facilities which had previously submitted a PA report, an SI report, a Department of Defense Installation Restoration Program report, or another Federal agency environmental restoration program report, but had not submitted a section 103 notification form. Section 120(c)(3) of CERCLA requires that EPA include information submitted under section 103 in the docket. In general, section 103 requires certain persons to provide notice of certain releases of hazardous substances. The aforementioned Federal agency environmental restoration program reports contain information similar to information provided pursuant to CERCLA section 103 and are considered equivalent forms of notification for purposes of the docket. Thus, the Agency believes that facilities which have provided information equivalent to a CERCLA section 103 notification, such as a Federal agency environmental restoration program report, should be included on the docket regardless of the absence of formal section 103 notification. Therefore, some of the facilities that EPA is adding today are being placed on the docket because of the above-mentioned reports.

III. Process for Compiling the Updated Docket

In compiling the newly reported facilities for the update being published today, EPA extracted the names, addresses, and identification numbers of facilities from four EPA databases—ERNS, Hazardous Waste Data Management System (HWDMS, a RCRA database), Resource Conservation and Recovery Information System (RCRIS), and CERCLIS (the CERCLA database)—which contain Federal facility information submitted under the four provisions listed in section 120(c).

Extensive computer checks compared the current docket list with the information obtained from the above databases to determine which facilities were, in fact, newly reported and qualified for inclusion on the update. In spite of the quality assurance efforts EPA has undertaken, it is possible that State-owned or privately-owned facilities may have been included. These problems are the result of historical procedures used to report and track Federal facility data; the Agency is working to resolve them. Federal agencies are requested to write to EPA's Docket Coordinator at the following address if revisions to this update information are necessary: Federal Facilities Docket Coordinator, Office of Federal Facilities Enforcement (OE-2261), U.S. EPA, 401 M Street SW., Washington, DC 20460

IV. Facilities Not Included

As explained in the original docket preamble (53 FR 4280), the docket does not include the following categories of facilities (note, however, that any of these types of facilities may, where appropriate, be listed on the NPL):

1. Facilities formerly owned by a Federal agency and now privately owned. However, facilities that are now owned by another Federal agency will remain on the docket, with responsibility for conducting PAs and SIs resting with the current owner.

2. Facilities operated but not currently owned by a Federal agency. For example, facilities that are operated by the Federal government under state or private ownership will not be listed on the docket.

3. SQGs that have never produced more than 1,000 kg in any month and have not reported releases under CERCLA section 103 or other hazardous waste activities under section 3016.

4. Facilities that are solely transporters as reported under RCRA section 3010.

V. Information Contained on Docket Listing

As discussed above, the update information below is divided into three separate sections. The first section comprises corrections to the docket. The second section is a list of facilities being deleted from the docket. The third section is a list of new facilities that are being added to the docket. Each facility listed as part of the update has been assigned a code that indicates a more specific reason(s) for the correction, deletion, or addition. The code key precedes the lists.

It is EPA's policy that all facilities on the additions list to this fifth docket update must submit a PA, and, if warranted, an SI, to EPA within 18 months of the date of this publication. A PA must include existing information about a site and its surrounding environment, including a thorough examination of the human, food-chain, and environmental targets, the potential waste sources, and migration pathways. If it appears that the site may score high enough for inclusion on the NPL or there may be a threat to human health or the environment, a followup SI is required. An SI augments the data collected in a PA. An SI may reflect sampling and other field data which is used to determine if further action or investigation is appropriate. This policy includes any facility changing

responsible agencies. These reports should be submitted to the Federal Facilities Coordinator in the appropriate EPA Regional Office.

The facilities listed in each section are organized by State and then grouped alphabetically within each State by the Federal agency responsible for the facility. Under each State heading is listed the facility name and address, the statutory provision(s) under which the facility was reported to EPA, the EPA region where the facility is located, and the correction codes.

The statutory provision(s) under which a facility reported are in a column entitled "Reporting Mechanisms" and each facility has its applicable mechanisms listed, separated by a comma. For example: 3010, 3016, 103(c).

The complete list of Federal facilities that now makes up the docket is not being published today. However, the list is available to interested parties and can be obtained by calling the Federal Facilities Docket Hotline (800–548–1016 or 703–883–8577). As of today, the total number of Federal facilities that appear on the docket is 1652.

VI. Facility Status Reporting

In response to numerous Federal agency requests, EPA has expanded the docket database to include information on the status of docket facilities. A prevalent concern has been the inability to identify facilities which, after submitting all necessary site assessment information, were found to warrant no further EPA involvement at this time. Accordingly, EPA has expanded the docket database to include a column indicating the facility's status. The status codes are as follows:

U=Undetermined
N=No Further Response Action Planned (NFRAP)
P=Currently Proposed for the NPL
F=Currently Final on the NPL
R=Removed from the Proposed NPL and No Longer Considered for the Final NPL
D=Deleted from the Final NPL

NFRAP is a common term used in the Superfund site assessment program. It is used to identify facilities where EPA has found that, based on currently available information, listing on the NPL is not likely and further assessment is not appropriate at this time. NFRAP status does not represent an EPA determination that there are no environmental threats present at the facility or that no further environmental response action of any kind is necessary. As stated, NFRAP is intended to mean only that the facility does not appear to warrant NPL listing based on the information available to EPA at this time, and therefore no further involvement by EPA in site assessment cleanup at the facility is anticipated. However, additional CERCLA response action by the agency that owns or operates the facility, whether remedial or removal actions, may be necessary at a facility with a NFRAP status.

The NPL status information was taken directly from CERCLIS. CERCLIS is a database that contains information used by EPA Headquarters and Regional personnel for site, program, and project management; CERCLIS contains the official inventory of all CERCLA sites (NPL and non-NPL) and supports all site planning and tracking functions. The status information in the docket database will be updated from time to time, but will not always be current; the current status of a facility is the status reflected in CERCLIS, which may change as new information is received. Docket facilities not listed in CERCLIS will have an "undetermined" status code until status is changed based on Regional information.

Dated: October 28, 1991.

Edward E. Reich,

Acting Assistant Administrator for Enforcement.

I. Docket Revisions

Categories of Revisions for Docket Update by Correction Code

Categories for Facility Deletion [1]

(1) Small Quantity Generator.
(2) Not Federally Owned.
(3) Formerly Federally Owned.
(4) No Hazardous Waste Generated.
(5) (This correction code is no longer applicable).
(6) Redundant Listing/Site on Facility.
(7) Combining Sites Into One Facility/Entries Combined.
(8) Does not Fit Facility Definition (All are Vessels).
(9) No Hazardous Waste (Responsible Agency Changed).
(10) Small Quantity Generator (Responsible Agency Changed).
(11) No Hazardous Waste (Temporary Storage Only).
(12) Not Federally Owned (Small Quantity Generator).
(13) Redundant Listing/Site on Facility (Agencies will Coordinate).
(14) Small Quantity Generator (Never Actually Built) Categories for Facility Addition.
(15) Small Quantity Generator with either a 3016 or 103.
(16) On Entry Being Split into Two/Agency Responsibility Being Split.
(17) New Information Obtained Showing that Facility Should be Included.
(18) Facility was a Site on a Facility that was disbanded, Now a Separate Facility.
(19) Sites were Combined into One Facility.
(19A) New Facility.

Categories for Corrections to Facility Information

(20) Reporting Provisions Change.
(20A) Typo Correction/Name Change/Address Change.
(21) Changing Responsible Agencies (New Responsible Agency has 18 months to submit PA).
(22) Changing Responsible Agencies and Title (New Responsible Agency has 18 months to submit PA).
(23) New Reporting Mechanism Added at Update.
(24) Reporting Mechanism Determined to be Not Applicable after Regional File Review.

[1] Further information on category definitions can be obtained by calling the Docket hotline.

FEDERAL FACILITIES DOCKET—DOCKET ADDITIONS

Facility name	Facility address	City	State	Zip Code	Agency	Reporting mechanism	Correction code
Fort Rodman	Fort Rodman	New Bedford	MA		Army	103c	19A
Hingham Annex	Union Street (Adj. Wompatuck St. Park).	Hingham	MA	02043	Army	103c	19A
MSNG Army Aviation (AVCRAD).	Hanger 1, Hewes Avenue.	Gulfport	MS	39507	Army	3010	19A
MSNG Camp McCain	P.O. Box 686	Elliott	MS	38926	Army	3010	19A
NASA Yellow Creek Production Facility.	1 NASA Drive	Iuka	MS	38852	NASA	3010	19A
Pascagoula Naval Station.	Singing River Island	Pascagoula	MS	39561	Navy	3010	19A
New Boston Air Force Station.	Chestnut Hill Road	New Boston	NH	03301	Air Force	103c	19A
US Army Cold Regions Research and Engineering Laby.	Route 10	Hanover	NH	03755	Army	103c	19A
Sachuset Point Dump	Sachuset Point Road	Middletown	RI	02840	Interior	103c	19A
Naval Reserve Center Freeport New York.	112 Hanse Ave	Freeport	NY	11520	Navy	3010	19A
USCG—Dunkirk Light	235 North Point Rd	Dunkirk	NY	14048	Transportation	3010	19A
USCG Station Sodus Point.	Foot of Wickam Blvd Box 126.	Sodus Point	NY	14555	Transportation	3010	19A
Food & Drug Administration FB.	200 C ST SW HFF-14 RM 6025.	Washington	DC	20204	General Services Admin.	3010 103c	19A
NIH Animal Center	Elmer School Road	Poolesville	MD	20837	Health and Human Services.	3010	19A
US Naval Comm Unit—Cheltenham.		Cheltenham	MD	20623	Navy	103a	19A
VAMC Perry Point	Bldg 23H	Perry Point	MD	21902	Veterans Administration	3010	19A
193rd Special Operations Group Paang.	Harrisburg Int'l Airport	Middletown	PA	17057	Air Force	3010	19A
AJCC—Fort Ritchie	Harbaugh Valley Rd	Blue Ridge Summit	PA	17214	Army	3010	19A
The Former Marietta AFS.	Rt 441	Marietta	PA		Air Force	103c	19A
US Army Ft Dix Tacony Warehouse.	7071 Wissonoming St	Philadelphia	PA	19124	Army	3010 103c	19A
US Postal Service	1136 Western Ave	Pittsburgh	PA	15233	Postal Service	3010	19A
United States Geological Survey.	12201 Sunrise Valley Dr.	Reston	VA	22092	General Services Admin.	3010	19A
US Arlington National Cemetery Mow Army.	Arlington National Cemetery.	Arlington	VA	22211	Army	3010	19A
Evans Army Reserve Center.	507 Westgate Parkway	Dothan	AL	36303	Army	3010	19A
Gunter Air Force Station	US 231 & Dalride Road	Montgomery	AL	36112	Air Force	103c	19A
Naval Station Mobile	7411 Lake Road	Mobile	AL	36605	Navy	3010	19A
Nolf Barin Field, Foley		Foley	AL		Navy	103c	19A
Phoenix Construction Serv., Inc.	Natchez Trace Parkway Rte. 2.	Florence	AL	35633	Transportation	3010	19A
Everglades National Park.	Route 9336	Homestead	FL	33030	Interior	3010	19A
NETPSA Saufley Field			FL		Navy	103c	19A
NTTC Corry Station		Pensacola	FL		Navy	103c	19A
Olustee Dump	Hwy 90 & Olustee Battlefield R.	Olustee	FL		Interior	103c	19A
USA Palatka AMSA 55-M.	4300 St Johns Ave	Palatka	FL	32077	Army	3010	19A
Centers for Disease Control.	4470 Buford Hiway	Chamblee	GA		Health and Human Services.	103c	19A
USA AMSA 54G-Augusta.	3311 Wrightsboro Rd	Augusta	GA	30904	Army	3010	19A
Corps of Engineers	5121 New Dam Road	Greenup	KY	41144	Corps of Engineers, Civil.	3010	19A
USDOE Site D11 Power Plant.		Paducah	KY		Energy	103a	19A
Army Reserve Center (Charlotte #2).	1412 Westover Drive	Charlotte	NC	28205	Army	103c	19A
Charleston Harbor Site		Charleston	SC		Interior	103c	19A
Natl Park Service Tour Boat Facility.	Concord St at End of Calhoun St.	Charleston	SC		Interior	103c	19A
Great Smoky Mtns Natl Park.	USNPS Rt 2	Gatlinburg	TN	37738	Interior	3005, 3010, 103c	19A
TVA Boone Hydro Plant	TN Hwy 75/8 Mi SE OF	Kingsport	TN	37662	Tennessee Valley Authority.	103a	19A
TVA Nickajack Hydro Plant.	TN Hwy 28	Guild	TN	37340	Tennessee Valley Authority.	3010	19A
TVA Watauga Hydro Plant.	Wilbur Dam Rd 5 Mi E of.	Elizabethton	TN	37643	Tennessee Valley Authority.	3010	19A
US Army Corps of Eng Ilarng Maint Center.	8660 W Cermak Rd	North Riverside	IL	60546	Army	3010	19A

FEDERAL FACILITIES DOCKET—DOCKET ADDITIONS—Continued

Facility name	Facility address	City	State	Zip Code	Agency	Reporting mechanism	Correction code
US Veterans Adm Medical Ctr Hospital.	1900 E Main St	Danville	IL		Veterans Administration	103c	19A
General Services Admin	231 W Lafayette St	Detroit	MI	48226	General Services Admin	3010	19A
Isle Royale National Park.	87 N Ripley St	Houghton	MI	49931	Interior	3010	19A
USACE Kincheloe AFB	Tone Rd	Kincheloe	MI	49788	Air Force	3010	19A
USAED Detroit Dist	3331 Radar Rd	Sault Ste Marie	MI	49783	Defense	3010	19A
Horicon National Wildlife Refuge.	Rural Route 2	Mayville	WI	53050	Interior	3010	19A
US Coast Guard Housing Rawley.	Rte 3 Hwy 0	Two Rivers	WI	54241	Transportation	3010	19A
US Army Corps of Engineer Millwood Res.	Route 1	Ashdown	AR		Corps of Engineers, Civil.	103c	19A
US Dept of Interior Hope Wildlife Area.	4 Miles North of Hwy 32	Hope	AR		Interior	103c	19A
US Navy New Orleans Naval Support Action.	2600 Gen Meyer Ave Bldg 101.	New Orleans	LA		Navy	103c	19A
Ross Aviation, Inc	Hangar 481	Kirtland AFB	NM	87117	Energy	103c	19A
137th Tactical Airlift Wing.	Will Rogers World Airport.	Oklahoma City	OK		Air Force	103c	19A
Caddo County Landfill #1.	SE/4 Sec7 T15N R11W SW/4 Sec8.	Apache	OK		Interior	103c	19A
Caddo County Landfill #2.	S2 SE4 Sec4 T7N R13W.	Carnegie	OK		Interior	103c	19A
Caddo County Landfill #3.	NE/4 NE4 Sec10 T7N R13W.	Carnegie	OK		Interior	103c	19A
Caddo County Landfill #4.	W2 NW4 Sec35 T8N R13W.	Carnegie	OK		Interior	103c	19A
Caddo County Landfill #5.	W/2 SW/4 Sec16 T6N R11.	Apache	OK		Interior	103c	19A
Caddo County Landfill #6.	SE4 SE4 Sec34 T9N R12.	Fort Cobb	OK		Interior	103c	19A
Caddo County Landfill #7.	SW4 NE4 Sec14 T9N R12W.	Fort Cobb	OK		Interior	103c	19A
Caddo County Landfill #8.	NE4 NE4 Sec22 T9N R12W.	Fort Cobb	OK		Interior	103c	19A
Unidentified Site	US Forest Service Property.	Huntsville	TX		Agriculture	103c	19A
US Army COE	681 County Road	Mission	TX	77553	Corps of Engineers, Civil.	103a	19A
Waverly (ex) Air Station (ARNG).	1 Mi S of	Waverly	IA		Army	103c	19A
Mark Twain National Forest.	401 Fairgrounds Road	Rolla	MO	65401	Agriculture	103c	19A
MO-AVCRAD	2501 Lester Jones Ave	Springfield	MO		Army	103c	19A
USDA FSQS Midwestern Lab.	4300 Goodfellow	St Louis	MO		Agriculture	3010 103c	19A
Western Area Power Admin-Foundry Site.	Corner of 10th & U Street.	Gering	NE		Energy	103c	19A
Anvil Points Oil Shale Station.	8 Mi W. of Rifle on I-70	Rifle	CO	81650	Interior	103c	19A
Dept of Military Affairs	1400 S 3rd Ave	Sterling	CO		Air Force	103c 3010	19A
Maybell Dump		Moffatt County	CO		Interior	103c	19A
Oak Creek Landfill		Routt County	CO		Interior	103c	19A
Rocky Mtn Nat'l Park	Estes Park	Estes Park	CO		Interior	103c	19A
Glasglow AFB			MT		Air Force	103c	19A
HUD Precious Metals Plating.	Star Route Box 85	Bonner	MT	59823	Housing and Urban Development.	103c	19A
Londonerry Mine	NW 1/4 SW 1/4 Sec4 T8N R13W.	Maxville	MT		Interior	103c	19A
USDOE-BPA Hot Springs Substation TLM Complex.	Hwy 28, S of Hot Springs, Sec14 T21N RW.	Hot Springs	MT	59845	Energy	103c	19A
Mt Lemon AF Station	Mt Lemon	Mt Lemon	AZ		Air Force	103c	19A
Somerton Landfill	S of AZ 95 at 16th St & Ave B.	Somerton	AZ		Interior	103c	19A
Teecnospos Dip Vat	US Hwy 160 Board Sch	Teecnospos	AZ		Interior	103c	19A
Wide Ruins Dip Vat	35 25' 03": 109 29' 32"	Wide Ruins	AZ		Interior	103c	19A
Angeles Natl Forest	Los Pinetos Storage Rt 1.	Saugus	CA		Agriculture	103c 3010	19A
Camp Nimitz Area	Naval Training Ctr	San Diego	CA		Navy	103c	19A
Chico Arpt	Cohassett Hwy	Chico	CA		Air Force	103c	19A
Cleveland Natl Forest	12500 Pomerado Rd	San Diego	CA		Agriculture	103c 3010	19A
El Portal Barium Tailings.	Int of Forests & Barium Mine Rd.	El Portal	CA		Interior	103c	19A
Kern Valley Landfill		Kern County	CA		Interior	103c	19A
Klau Mine	S½, SEC 33, T26S, R10E, Mt Diablo.	San Luis County	CA		Interior	103c	19A

FEDERAL FACILITIES DOCKET—DOCKET ADDITIONS—Continued

Facility name	Facility address	City	State	Zip Code	Agency	Reporting mechanism	Correction code
Landers Sanitary Landfill.		San Bernardino County	CA		Interior	103c	19A
National Marine Fisheries Serv.	3150 Paradise Dr	Tiburon	CA		Commerce	103c	19A
Newberry Dump	N½, NW¼, NW¼ Sec 15, T8N, R3E.	Newberry Springs	CA		Interior	103c	19A
Oakland City of Housing Authority.	1180 25th Avenue	Oakland	CA	94601	Housing and Urban Development.	3010	19A
Osage Industries	60th West	Rosamond	CA		Interior	103c	19A
Rinconda Mine	S½, Sec 21, T30S, R14E, Mt Diablo.	San Luis Obispo County	CA		Interior	103c	19A
San Bernardino County Landfill.	Sections 20, 21, 28, 29, T2N, R6E.	San Bernardino County	CA		Interior	103c	19A
Silver Strand Navy Housing.	1202 Laytey Rd	Coronado	CA	92118	Navy	3010	19A
Upper Middle Park Canyon Trespass Dump.		Inyo County	CA		Interior	103c	19A
US Forest Serv—Cal Copper Co.	Sec 1-5,9,10,12,25 T21N R13E.	Quincy	CA		Agriculture	103c	19A
USDOI BLM	Nearest City: Merced Falls.	Merced Falls	CA		Interior	103c	19A
USN Bayview Navy Housing.	1840 Saipan Drive	San Diego	CA	92139	Navy	3010	19A
USN Cabrillo Heights Navy Housing.	8471 Jordan St	San Diego	CA	92139	Navy	3010	19A
USN Chesterton Navy Housing.	7468 Wellington St	San Diego	CA	92111	Navy	3010	19A
USN Chollas Heights Radio Transm.	6410 Zero Rd	San Diego	CA	92115	Navy	3010	19A
USN Imperial Beach Radio Receiver.	1 Silver Strand Blvd	Imperial Beach	CA	92032	Navy	3010	19A
White Point Former Nike Site.	Western & 25th Sts	San Pedro	CA		Air Force	103c	19A
USN Naval Supply Depot Guam.	Sumay Drive Supply Depot.	Naval Station	GU	96630	Navy	3010	19A
Army Aviation Support Facility #2.	General Lyman Field Bldg 619.	Hilo	HI		Army	103c	19A
NAVCAMS Wahiawa	Off Center St Oahu Island.	Wahiawa	HI		Navy	103c	19A
NRTF Lauluafei	Lualuafei Valley Oahu Island.	Lualualei	HI		Navy	103c	19A
Opana	South of Kawela Oahu Island.	Opana	HI		Navy	103c	19A
Carson City Landfill		Ormsby County	NV		Interior	103c	19A
Henderson Landfill	T21S R63E Section 28, 29.	Henderson	NV		Interior	103c	19A
Indian Springs Landfill		Clark County	NV		Interior	103c	19A
Rio Tinto Copper Mine	Sec 10 & 11 T45N R53E MDM.	Mountain City	NV		Interior	103c	19A
Aniak Airport	61' 34N 159' 31'W	Aniak	AK	99557	Interior	103c 3016	19A
Bettles Field	Bettles Airport	Bettles	AK	99726	Transportation	103c 3016	19A
Big Delta	Fort Greely Airport	Delta Junction	AK	99737	Corps of Engineers, Civil.	103c 3016	19A
Chandalar Dump	T16S, R11E, SEC 9	Umiat Meridian	AK		Interior	103c	19A
Chugach Forest	Mi 23.5 Seward Highway.	Seward	AK	99664	Agriculture	103c 3010	19A
Collinson Point Dewline Site.	290 Miles SE of Barrow	Barrow	AK	99723	Interior	103c	19A
Elson Lagoon	East of Barrow	Barrow	AK	99723	Navy	103c	19A
Fort Egbert Dump	T1S, R32E, SEC 31	Fairbanks Meridian	AK		Interior	103c	19A
Gustavas Airport		Gustavas	AK	99826	Transportation	3016 103c	19A
Old Man Camp Site	T19N, R14W, Sec 19 & T19N, R15W, Sec 24.	Fairbanks Meridian	AK		Interior	103c	19A
Paxson Dump	T22S, R12E, Sec 31	Fairbanks Meridian	AK		Interior	103c	19A
Sag River Dump	T8S, R14E, Sec 8	Umiat Meridian	AK		Interior	103c	19A
USAF Wildwood AFS	Wildwood Village off Kenai SPU.	Kenai	AK	99611	Air Force	3010	19A
USArmy NGB Noatak	(Unspecified)	Noatak	AK		Army	103c	19A
USDA-FA Duncan Canal Level Island Vortac Site.	Level Island-North End	Level Island (Petersburg).	AK		Agriculture	3016 103c	19A
USDA-FA Indian Point/ Duncan Canal.	Kupreanof Island-Indian Point.		AK		Agriculture	3016 103c	19A
USDA-FS Coghlan Island.		Auke Bay	AK	99821	Agriculture	3016, 103c	19A
USDOI BLM Skull Cliff Loran Station.	23 Miles SW of Barrow on Coast.	Barrow	AK	99723	Interior	103c	19A

FEDERAL FACILITIES DOCKET—DOCKET ADDITIONS—Continued

Facility name	Facility address	City	State	Zip Code	Agency	Reporting mechanism	Correction code
USDOI FWS Nuvagapak Dewline Site.	170 Miles East of Prudhoe Bay.	Barrow	AK	99723	Interior	103c	19A
Boise National Forest	750 Front Street	Boise	ID	83702	Agriculture	103c	19A
GEM County Landfill	Dewey Lane, 10M East of Emmett.	Emmett	ID		Interior	103c	19A
Glenns Ferry Landfill	T.5.S. R. 10E BM NW ¼ SW ¼ Sec 21.	Glenns Ferry	ID		Interior	103c	19A
Jerome County Landfill		Jerome County	ID		Interior	103c	19A
Jackson Park Housing	Naval Hospital Bremerton.	Bremerton	WA	98314	Navy	3016	19A
Naval Radio Station T-Jim Creek.	4 Miles east of State Highway 530 at OSO.	OSO	WA		Navy	103c	19A
USDOL Ft Simcoe Job Corp Ctr.	W End of Hwy 220 T10N R16E S21.	White Swan	WA	98952	Labor	3010	19A

FEDERAL FACILITIES DOCKET—DOCKET CORRECTIONS

Facility name	Facility address	City	State	Zip Code	Agency	Reporting mechanism	Correction codes
C Naval Air Station South Weymouth.	NAS S. Weymouth PWD Code 72.3.	South Weymouth	MA	02190	Navy	3005 3010 3016	23
O Naval Air Station South Weymouth.	NAS S. Weymouth PWD Code 72.3.	South Weymouth	MA	02190	Navy	3005 3010	
C Parker River Refuge	Plum Island Turnpike and Ocean Ave.	Newburyport	MA	01950	Interior	103c 3016	23
O Parker River Refuge	Plum Island Turnpike and Ocean Ave.	Newburyport	MA	01950	Interior	103c	
C Defense Fuel Support PT Casco Bay.	Rt 123	South Harpswell Neck	ME	04079	Defense Logistics Agency.	3010 3016 103c	21
O Defense Fuel Support PT Casco Bay.	Rt 123	South Harpswell Neck	ME	04079	Defense	3010 3016 103c	
C Defense Fuel Support PT Searsport.	Trundy Road Box 112	Searsport	ME	04974	Defense Logistics Agency.	3010 3016 103c	21
O Defense Fuel Support PT Searsport.	Trundy Road Box 112	Searsport	ME	04974	Defense	3010 3016 103c	
C US Naval Sec Grp Activity.	Bldg 41 (operations site).	Gouldsboro	ME	04624	Navy	103c	20A
O US Naval Sec Grp Operations Site.		Corea	ME	04624	Navy	103c	
C US Defense Fuel Support PT Newington.	Patterson Lane	Newington	NH	03801	Defense Logistics Agency.	3010 3016 103c	21
O US Defense Fuel Support PT Newington.	Patterson Lane	Newington	NH	03801	Defense	3010 3016 103c	
C Vermont Ang	Burlington IAP	Burlington	VT	05401	Air Force	3010 103c 3016	23
O Vermont Ang	Burlington IAP	Burlington	VT	05401	Air Force	3010 103c	
C Maywood Interim Storage Site.	Route 17 and Grove Street.	Maywood/Rochelle Park.	NJ	07662	Energy	3016 103c 3010	23
O Maywood Interim Storage Site.	Route 17 and Grove Street.	Maywood/Rochelle Park.	NJ	07662	Energy	3016 103c	
C Military Ocean Terminal.	Foot of 32nd Street	Bayonne	NJ	07002	Army	3005 3010 3016 103c 103a	23
O Military Ocean Terminal.	Foot of 32nd Street	Bayonne	NJ	07002	Army	3005 3010 3016 103c	
C Fire Island National Seashore.	120 Laurel Street	Patchogue	NY	11772	Interior	3016 3010	23
O Fire Island National Seashore.	120 Laurel Street	Patchogue	NY	11772	Interior	3016	
C Iroquois National Wildlife Refuge.	Casey Rd	Alabama	NY	14003	Interior	3016 103c	23
O Iroquois National Wildlife Refuge.	Casey Rd	Alabama	NY	14003	Interior	3016	
C Verona Defense Fuel Support Pt.	Main St	Verona	NY	13478	Defense Logistics Agency.	3010 3016 103c	21
O Verona Defense Fuel Support Pt.	Main St	Verona	NY	13478	Defense	3010 3016 103c	
C Anacostia Naval Station.	South Capitol St/ Anacostia Dr.	Washington	DC	20374	Navy	3010	20A
O US Naval District Wash Anacostia.	South Capitol St/ Anacostia Dr.	Washington	DC	20374	Navy	3010	
C Bolling Air Force Base.	Hq 110th Air Base Wing 5 Capitol St.	Washington	DC	20331	Air Force	103c 3016	23

FEDERAL FACILITIES DOCKET—DOCKET CORRECTIONS—Continued

Facility name	Facility address	City	State	Zip Code	Agency	Reporting mechanism	Correction codes
O Bolling Air Force Base.	Hq 110th Air Base Wing 5 Capitol St.	Washington	DC	20331	Air Force	103c	
C Hubert Humphrey Building.	200 Independence Avenue.	Washington	DC	20024	Health and Human Services.	3016 103c	23
O Hubert Humphrey Building.	200 Independence Avenue.	Washington	DC	20024	Health and Human Services.	3016	
C Washington Navy Yard.	7th & M Streets, S.W.	Washington	DC	20374	Navy	3010 103c 3016	23, 20A
O Naval Shipyard	Washington Navy Yard	Washington	DC	20374	Navy	3010 103c	
C (Air National Guard)-Martin's Airport.	Eastern Ave and Wilson Point Rd.	Baltimore	MD		Air Force	103c 3016	23
O (Air National Guard)-Martin's Airport.	Eastern Ave and Wilson Point Rd.	Baltimore	MD		Air Force	103c	
C Beltsville Agricultural Res. Ctr.	Blding 003 Barc-West	Beltsville	MD	20705	Agriculture	3010 3016 103c 103a	23
O Beltsville Agricultural Res. Ctr.	Blding 003 Barc-West	Beltsville	MD	20705	Agriculture	3010 3016 103c	
C National Bureau of Standards.	Quince Orchard Rd	Gaithersburg	MD	20760	Commerce	3005 3010 103c	23
O National Bureau of Standards.	Quince Orchard Rd	Gaithersburg	MD	20760	Commerce	3005 3010	
C Naval Air Station Patuxent River.	NE of Route 235	Patuxent River	MD	20670	Navy	3005 3010 3016 103c	20A
O NAS Patuxent River	NE of Route 235	Patuxent River	MD	20670	Navy	3005 3010 3016 103c	
C Naval Ordnance Station Indian Head.	Rte 210 Maryland	Indian Head	MD	20640	Navy	3005 3010 3016 103c 103a	23
O Naval Ordnance Station Indian Head.	Rte 210 Maryland	Indian Head	MD	20640	Navy	3005 3010 3016 103c	
C Walter Reed Army Medical Center.	2461 Linden Lane	Silver Spring	MD	20910	Army	3010 103c	23
O Walter Reed Army Medical Center.	2461 Linden Lane	Silver Spring	MD	20910	Army	3010	
C Allegheny Nat'l Forest.	222 Liberty Street Box 847.	Warren	PA		Agriculture	103c 3016	23
O Allegheny Nat'l Forest.	222 Liberty Street Box 847.	Warren	PA		Agriculture	103c	
C Carlisle Army Barracks.	Carlisle Barracks	Carlisle	PA	17013	Army	103c 103a	23
O Carlisle Army Barracks.	Carlisle Barracks	Carlisle	PA	17013	Army	103c	
C Naval Air Station Willow Grove.	Rt 611	Willow Grove	PA	19090	Navy	3005 3010 3016 103c	20A
O NAS Willow Grove	Rt 611	Willow Grove	PA	19090	Navy	3005 3010 3016 103c	
C Veterans Administration Medical Center.	University and Woodland Ave.	Philadelphia	PA	19104	Veterans Administration	3010 103a	23
O Veterans Administration Medical Center.	University and Woodland Ave.	Philadelphia	PA	19104	Veterans Administration	3010	
C E. Shore Va National Wildlife.	Rd 1 Box 122B	Cape Charles	VA	23310	Interior	3016 103c 3010	23
O E. Shore Va National Wildlife Refuge.	Rd 1 Box 122B	Cape Charles	VA	23310	Interior	3016 103c	
C Fort Eustis	US Trans Ctr-Ft Eustis	Newport News	VA	23604	Army	3005 3010 3016 103c 103a	23
O Fort Eustis	US Trans Ctr-Ft Eustis	Newport News	VA	23604	Army	3005 3010 3016 103c	
C NASA Wallops Flight Center.	Rte 175	Wallops Island	VA	23337	NASA	3010 103a 103c	23
O NASA Wallops Flight Center.	Rte 175	Wallops Island	VA	23337	NASA	3010	
C Naval Amph Base-Little Cr.	Little Creek	Norfolk	VA	23521	Navy	3005 3010 3016 103c 103a	23
O Naval Amph Base-Little Cr.	Little Creek	Norfolk	VA	23521	Navy	3005 3010 3016 103c	23
C Navy and Marine Corps Reserve Roanoke.	5301 Barnes Ave	Roanoke	VA	24019	Navy	3010 103c	23, 20A
O Navy and Marine Corps Reserve Roanoke.	5301 Barnes Ave	Roanoke	VA	24019	Navy	3010	
C Radford Army Ammo Plant.	State Rte 114	Radford	VA	24141	Army	3005 3010 3016 103c 103a	23
O Radford Army Ammo Plant.	State Rte 114	Radford	VA	24141	Army	3005 3010 3016 103c	

FEDERAL FACILITIES DOCKET—DOCKET CORRECTIONS—Continued

Facility name	Facility address	City	State	Zip Code	Agency	Reporting mechanism	Correction codes
C US Coast Guard Support Center.	4000 Coast Guard Blvd	Portsmouth	VA	23703	Transportation	3010 103c	23
O US Coast Guard Support Center.	4000 Coast Guard Blvd	Portsmouth	VA	23703	Transportation	3010	
C US Army Engineer District-Wilmington.	John H Kerr Reservoir	Boydton	VA	23917	Corps of Engineers, Civil.	3010 103c	20A
O US Army Engineer District-Boydton.	John H Kerr Reservoir	Boydton	VA	23917	Corps of Engineers, Civil.	3010 103c	
C USN Craney Island Fuel Terminal.	Craney Island Fuel Terminal.	Portsmouth	VA	23702	Navy	3005 3010 3016 103c	20A
O Naval Supply Center, Norfolk.	Craney Island Fuel Terminal.	Portsmouth	VA	23702	Navy	3005 3010 3016 103c	
C Warrenton Training Center.	Fauquier Springs Rd	Warrenton	VA	22186	Army	3010 103c	23
O Warrenton Training Center.	Fauquier Springs Rd	Warrenton	VA	22186	Army	3010	
C Washington National Airport.	Alexandria	Alexandria AMA 124	VA	20001	Transportation	3005 3010 3016	23
O Washington National Airport.	Alexandria	Alexandria AMA 124	VA	20001	Transportation	3005 3010	
C Anniston Army Depot.	SDSAN-DS-FE	Anniston	AL	36201-5080	Army	3005 3010 3016 103c	20A
O Anniston Army Depot.	SDSAN-DS-FE #36201-5080.	Anniston	AL	36201	Army	3005 3010 3016 103c	
C US Army Missle Command—Redstone Arsenal.	Cmdr USAMICOM DRSMI-K.	Huntsville	AL	35898	Army	3005 3010 3016 103c 103a	23, 20A
O Redstone Arsenal	Cmdr USAMICOM DRSMI-K.	Huntsville	AL	35898	Army	3005 3010 3016 103c	
C Defense Fuel Support Point-Lynn Haven.	W End of 10th Street	Lynn Haven	FL	32444	Defense Logistic Agency.	3010 3016 103c	21
O Defense Fuel Support Point-Lynn Haven.	W End of 10th Street	Lynn Haven	FL	32444	Defense	3010 3016 103c	
C Defense Fuel Support Point—Tampa.	Box 13736	Tampa	FL	33611	Defense	3010 3016 103c	21
O Defense Fuel Support Point—Tampa.	Box 13736	Tampa	FL	33611	Defense	3010 3016 103c	
C Eglin Air Force Base	3200 SPTW/DEV	Eglin AFB	FL	32542	Air Force	3005 3010 3016 103c 103a	23
O Eglin Air Force Base.	3200 SPTW/DEV	Eglin AFB	FL	32542	Air Force	3005 3010 3016 103c	
C Naval Air Station Key West.	Naval Air Station	Key West	FL	33042	Navy	3005 3010 3016 103c	20A
O Naval Air Station, Key West.	Naval Air Station	Key West	FL	33042	Navy	3005 3010 3016 103c	
C Naval Air Station Whiting Field.	FL Hwy 87 A	Milton	FL	32570	Navy	3010 103c	20A
O NAS Whiting Field	FL Hwy 87 A	Milton	FL	32570	Navy	3010 103c	
C Naval Underwater Systems Center W Palm Beach.	801 Clematis Street	W Palm Beach	FL	33402	Navy	3010	20A
O Naval Underwater Systems Center Palm Beach.	801 Clematis Street	W Palm Beach	FL	33402	Navy	3010	
C Lexington—Bluegrass Army Depot.	Haley Rd	Lexington	KY	40511	Army	3005 3010 3016 103c 103a	23
O Lexington—Bluegrass Army Depot.	Haley Rd	Lexington	KY	40511	Army	3005 3010 3016 103c	
C Paducah Gaseous Diffusion Plant.	PO Box 1410 Hobbs Road.	Paducah	KY	42001	Energy	3005 3010 3016 103a	23
O Paducah Gaseous Diffusion Plant.	PO Box 1410 Hobbs Road.	Paducah	KY	42001	Energy	3005 3010 3016	
C TVA Shawnee Fossil Plant.	Highway 996	West Paducah	KY	42086	Tennessee Valley Authority.	3010 103a	23
O TVA Shawnee Fossil Plant.	Highway 996	West Paducah	KY	42086	Tennessee Valley Authority.	3010	
C Army Reserve Center (Brevard).	E French Broad St	Brevard	NC	28712	Army	3010 103c	20A
O Army Reserve Center (Brevard).	E French Broad St	Brevard	NC	28712	Army	3010 103c	
C Pope Air Force Base.	317 CSG/CC	Pope AFB	NC	28308	Air Force	3005 3010 103c 3016	23

FEDERAL FACILITIES DOCKET—DOCKET CORRECTIONS—Continued

Facility name	Facility address	City	State	Zip Code	Agency	Reporting mechanism	Correction codes
O Pope Air Force Base.	317 CSG/CC	Pope AFB	NC	28308	Air Force	3005 3010 103c	
C Defense Fuel Supply Point Charleston.	N Rhett Ave	Hanahan	SC	29406	Defense Logistics Agency.	3010 3016	21
O Defense Fuel Supply Point Charleston.	N Rhett Ave	Hanahan	SC	29406	Defense	3010 3016	
C Naval Weapons Station Charleston S. Annex.	Remount Road	North Charleston	SC	29406	Navy	103c	20A
O Charleston Army Depot.	Remount Road	North Charleston	SC	29406	Navy	103c	
C Allen Fossil Plant (Allen Steam Plant).	2574 Plant Rd	Memphis	TN	38109	Tennessee Valley Authority.	3005 3010 3016 103c 103a	23
O Allen Fossil Plant (Allen Steam Plant).	2574 Plant Rd	Memphis	TN	38109	Tennessee Valley Authority.	3005 3010 3016 103c	
C Defense Depot Memphis.	2163 Airways Blvd	Memphis	TN	38114	Defense Logistics Agency.	3005 3010 3016 103c 103a	23
O Defense Depot Memphis.	2163 Airways Blvd	Memphis	TN	38114	Defense Logistic Agency.	3005 3010 3016 103c	
C TVA Johnsonville Steam Plt.	US Hwy 70 E	New Johnsonville	TN	37134	Tennessee Valley Authority.	103c 3010 103a	23
O TVA Johnsonville Steam Plt.	US Hwy 70 E	New Johnsonville	TN	37134	Tennessee Valley Authority.	103c 3010	
C TVA Knoxville Garage.	4216 Greenway	Knoxville	TN	37902	Tennessee Valley Authority.	103c 3010	20A
O TVA Knoxville Garage.	4216 Greenway	Knoxville	TN	37902	Tennessee Valley Authority.	103c 3010	
C Scott AFB	375 ABG/CC	Scott AFB	IL	62225	Air Force	3005 3010 103c 103a 3016	23
O Scott AFB	375 ABG/CC	Scott AFB	IL	62225	Air Force	3005 3010 103c 103a	
C US Air Force 928th Tactical Unit.	Chicago O'Hare Airport	Chicago	IL	60666	Air Force	3010 3016	23
O US Air Force 928th Tactical Unit.	Chicago O'Hare Airport	Chicago	IL	60666	Air Force	3010	
C US Navy Glenview Naval Air Station.	Naval Air Station	Glenview	IL	60026	Navy	3005 3010 3015	23
O US Navy Glenview Naval Air Station.	Naval Air Station	Glenview	IL	60026	Navy	3005 3010	
C Defense Logistics Agency New Haven Depot.	State Rt 14	New Haven	IN	46774	Defense Logistics Agency.	3010	21
O Defense Logistics Agency New Haven Depot.	State Rt 14	New Haven	IN	46774	Defense	3010	
C Hiawatha Nat'l Forest.	2727 N. Lincoln Road	Escanaba	MI	49829	Agriculture	103c 3016	23
O Hiawatha Nat'l Forest.	2727 N. Lincoln Road	Escanaba	MI	49829	Agriculture	103c	
C Huron-Manistee N.F. Chemical Waste.	12 N. Charles	White Cloud	MI	49348	Agriculture	103c 3010 3016	23
O Huron-Manistee N.F. Chemical Waste.	12 N. Charles	White Cloud	MI	49348	Agriculture	103c	
C Ottawa National Forest.	2100 E. Cloverland Dr	Watersmeet	MI	49969	Agriculture	3010 3016	20A
O Ottawa National Forest.	2100 E. Cloverland Dr	Ironwood	MI	49969	Agriculture	3010 3016	
C US Air Force Phelps/Collins AP.	Airport Road	Alpena	MI	49707	Air Force	3010 3016	23
O US Air Force Phelps/Collins AP.	Airport Road	Alpena	MI	49707	Air Force	3010	
C US Dept of Defense DFSP Escanaba.	US Highway 41 Delta County 001(ESC).	Gladstone	MI	49837	Defense Logistics Agency.	3010 3016 103c	21
O US Dept of Defense DFSP Escanaba.	US Highway 41 Delta County 001(ESC).	Gladstone	MI	49837	Defense	3010 3016 103c	
C US Post Office	1515 Fort St	Lincoln Park	MI	48146	Postal Service	3010	20A
O US Post Office	1515 Fort St	Lincoln Park	MI	48146	Postal Service	3010	
C USDOJ-BP Unicor Fed Prison Ind Inc.	4002 Arkona	Milan	MI	48197	Justice	3010 103a	23
O USDOJ-BP Unicor Fed Prison Ind Inc.	4002 Arkona	Milan	MI	48197	Justice	3010	
C US AFB Duluth Intl Airport.	Stebner Rd	Duluth Intl Airport	MN	55814	Air Force	3005 3010 103c 3016	23
O US AFB Duluth Intl Airport.	Stebner Rd	Duluth Intl Airport	MN	55814	Air Force	3005 3010 103c	
C US Coast Guard Station Duluth.	1201 Minnesota Ave	Duluth	MN	55802	Transportation	3010 3016	23

FEDERAL FACILITIES DOCKET—DOCKET CORRECTIONS—Continued

Facility name	Facility address	City	State	Zip Code	Agency	Reporting mechanism	Correction codes
O US Coast Guard Station Duluth.	1201 Minnesota Ave	Duluth	MN	55802	Transportation	3010	
C USVA Veterans Affairs Medical Center.	One Veterans Dr	Minneapolis	MN	55417	Veterans Administration	3010 3016	23
O USVA Veterans Affairs Medical Center.	One Veterans Dr	Minneapolis	MN	55417	Veterans Administration	3010	
C US Air Force Youngstown Map Ohio.	King Graves Rd	Youngstown Map	OH	44473	Air Force	3010 103c 3016	23, 20A
O US Air Force Youngstown Map Ohio.	King Graves Rd	Vienna TWP	OH	44473	Air Force	3010 103c	
C US DOD Def Fuel Support Pit Cincinnati.	4820 River Rd, Hamilton County.	Cincinnati	OH	45233	Defense Logistics Agency.	3010 3016 103c	21
O US DOD Def Fuel Support Pit Cincinnati.	4820 River Rd, Hamilton County.	Cincinnati	OH	45233	Defense	3010 3016 103c	
C US DOE Feed Material Production Center.	7400 Willy Road, Hamilton County.	Fernald	OH	45030	Energy	3005 3010 3016 103c 103a	23
O US DOE Feed Material Production Center.	7400 Willy Road, Hamilton County.	Fernald	OH	45030	Energy	3005 3010 3016 103c	
C US DOE Portsmouth Gaseous Diffusion Plt.	US Rte 235, Pike County.	Piketon	OH	45661	Energy	3005 3010 3016 103c 103a	23
O US DOE Portsmouth Gaseous Diffusion Plt.	US Rte 235, Pike County.	Piketon	OH	45661	Energy	3005 3010 3016 103c	
C Wayne-Hoosier NF Webb Site.	T4N, R16W, Sec. 18	Ironton	OH		Agriculture	103c 3016	23
O Wayne-Hoosier NF Webb Site.	T4N, R16W, Sec. 18	Ironton	OH		Agriculture	103c	
C Gen Billy Mitchell Field.	440 CSG/DE 300 E. College Ave.	Milwaukee	WI	53207	Air Force	3010 103c 3016	23
O Gen Billy Mitchell Field.	440 CSG/DE 300 E. College Ave.	Milwaukee	WI	53207	Air Force	3010 103c	
C US Army Fort McCoy Military Reservation.	HQ Fort McCoy, Monroe County.	Sparta	WI	54656	Army	3005 3010 3016 103c 103a	23
O US Army Fort McCoy Military Reservation.	HQ Fort McCoy, Monroe County.	Sparta	WI	54656	Army	3005 3010 3016 103c	
C Naval Air Station New Orleans.	32 Belle Chase Hwy	Belle Chasse	LA	70037	Navy	3010 103c	20A
O Naval Air Station, New Orleans.	32 Belle Chase Hwy	Belle Chasse	LA	70037	Navy	3010 103c	
C BLM-Anthony Landfill.	T26S R4E SEC30 NW¼+E½ of Lot 2.	Anthony	NM	88021	Interior	103c 3016	23
O BLM-Anthony Landfill.	T26S R4E SEC30 NW¼+E½ of Lot 2.	Anthony	NM	88021	Interior	103c	
C BLM-Artesia Landfill	T17SR25ESEC10	Artesia	NM	88210	Interior	103c 3016	23
O BLM-Artesia Landfill	T17SR25ESEC10	Artesia	NM	88210	Interior	103c	
C BLM-Loco Hills Landfill.	T17SR30ESEC22		NM		Interior	103c 3016	23
O BLM-Loco Hills Landfill.	T17SR30ESEC22		NM		Interior	103c	
C BLM-Mesilla Landfill	T24WR1ESEC14		NM		Interior	103c 3016	23
O BLM-Mesilla Landfill	T24WR1ESEC14		NM		Interior	103c	
C BLM-National Potash Co.	Eddy & Lee Countys	Carlsbad	NM	88220	Interior	103c 3016	23
O BLM-National Potash Co.	Eddy & Lee Countys	Carlsbad	NM	88220	Interior	103c	
C Cibola National Forest.	Cibola National Forest	Magdalena	NM	87825	Agriculture	103c	20A
O Cobb Resources Corp.	Cibola National Forest	Magdalena	NM	87825	Agriculture	103c	
C Los Alamos Scientific Laboratory.	West Jemez Road	Los Alamos	NM	87544	Energy	3005 3010 3016 103c 103a	23
O Los Alamos Scientific Laboratory.	West Jemez Road	Los Alamos	NM	87544	Energy	3005 3010 3016 103c	
C Lovelace Inhalation Toxicology Research Inst.	Bldg. 9200, Kirtland AFB East.	Albuquerque	NM	87185	Energy	103c 3016	23
O Lovelace Inhalation Toxicology Research Inst.	Bldg. 9200, Kirtland AFB East.	Albuquerque	NM	87185	Energy	103c	
C NASA—JSC Whitesands Test Facility.	14 Mi E. & 6 Mi N. of Las Cruces.	Las Cruces	NM	88004	NASA	3005 3010 3016 103c 103a	23

FEDERAL FACILITIES DOCKET—DOCKET CORRECTIONS—Continued

Facility name	Facility address	City	State	Zip Code	Agency	Reporting mechanism	Correction codes
O NASA—JSC Whitesands Test Facility.	14 MI E. & 6 MI N. of Las Cruces.	Las Cruces	NM	88004	NASA	3005 3010 3016 103c	
C US Air Force Melrose Range.	25 MI W of Cannon AFB.	Melrose	NM	88124	Air Force	3005 3010 3016	23
O US Air Force Melrose Range.	25 MI W of Cannon AFB.	Melrose	NM	88124	Air Force	3005 3010	
C US Army—White Sands Missile Range.	STEWS-FE	White Sands	NM	88002-5076	Army	3005 3010 3016 103c 103a	23
O US Army—White Sands Missile Range.	STEWS-FE	White Sands	NM	88002-5076	Army	3005 3010 3016 103c	
C Altus Air Force Base	443 ABG/CC	Altus AFB	OK	73523	Air Force	3005 3010 103c 3016	23
O Altus Air Force Base.	443 ABG/CC	Altus AFB	OK	73523	Air Force	3005 3010 103c	
C Robert S Kerr Lock Dam & Resevoir.	Star Route 4	Sallisaw	OK	74063	Corps of Engineers, Civil.	3005 3010 3016	23
O Robert S Kerr Lock Dam & Resevoir.	Star Route 4	Sallisaw	OK	74063	Corps of Engineers, Civil.	3005 3010	
C Southern Plains Range Research Laboratory.	2000 18th Street	Woodward	OK	73801	Agriculture	103c 3016	23
O Southern Plains Range Research Laboratory.	2000 18th Street	Woodward	OK	73801	Agriculture	103c	
C Wichita Mountains National Wildlife Refuge.	Comanche County		OK		Interior	3016 103c	23
O Wichita Mountains National Wildlife Refuge.	Comanche County		OK		Interior	3016	
C 147th ING at Ellington Field.	Clothier Avenue	Houston	TX	77209	Air Force	103c 3016	23
O 147th ING at Ellington Field.	Clothier Avenue	Houston	TX	77209	Air Force	103c	
C L.B. Johnson Space Center.	2101 NASA Road	Houston	TX	77058	NASA	3005 3010 3016 103a	23
O L.B. Johnson Space Center.	2101 NASA Road	Houston	TX	77058	NASA	3005 3010 3016	
C Lake Lavon—North Gully Site 1.	Highway 380	Wylie	TX	75077	Corps of Engineers, Civil.	3016	20A
O Lake Lavon—North Gully Site 1.	Highway 380	Wylie	TX	75077	Corps of Engineers, Civil.	3016	
C Lake Lavon—St Paul Site 2.	S End Rolling Meadows St.	Wylie	TX	75098	Corps of Engineers, Civil.	103c	20A
O Lake Lavon—St Paul Site 2.	S End Rolling Meadows St.	Wylie	TX	75098	Corps of Engineers, Civil.	103c	
C US Army Air Defense Center & Fort Bliss.	Pershing Drive	Fort Bliss	TX	79916	Army	3005 3010 3016 103c 103a	23
O US Army Air Defense Center & Fort Bliss.	Pershing Drive	Fort Bliss	TX	79916	Army	3005 3010 3016 103c	
C US DOJ Fed Cor Inst Bastrop.	Hwy95 8mi NE of Bastrop.	Bastrop	TX	78602	Justice	3010 3016	23
O US DOJ Fed Cor Inst Bastrop.	Hwy95 8mi NE of Bastrop.	Bastrop	TX	78602	Justice	3010	
C Ft Des Moines (Inactive).	225 E Army Post Rd	Des Moines	IA	50315	Army	103c 103a	23
O Ft Des Moines (Inactive).	225 E Army Post Rd	Des Moines	IA	50315	Army	103c	
C United States Penitentiary—Leavenworth, KS.	USP—Leavenworth	Leavenworth	KS	66048	Justice	3016 103c 3010	23
C United States Penitentiary—Leavenworth, KS.	USP—Leavenworth	Leavenworth	KS	66048	Justice	3016	
C Defense Mapping—Fee.	3200 S. Second Street	St. Louis	MO	63118	Defense Mapping Agency.	3010	21
O Defense Mapping—Fee.	3200 S. Second Street	St. Louis	MO	63118	Defense	3010	
C Defense Mapping Agency—Fee.	8900 S. Broadway	St. Louis	MO	63118	Defense Mapping Agency.	3010	21
O Defense Mapping Agency—Fee.	8900 S. Broadway	St. Louis	MO	63118	Defense	3010	
C Richards Gebaur AFB.	442 CSG	Belton	MO	64030	Air Force	3016 103c 3010	23
C Richards Gebaur AFB.	442 CSG	Belton	MO	64030	Air Force	3016 103c	

FEDERAL FACILITIES DOCKET—DOCKET CORRECTIONS—Continued

Facility name	Facility address	City	State	Zip Code	Agency	Reporting mechanism	Correction codes
C Weldon Springs Quarry/Plnt/Pits.	St Hwy 94 2 Mi S of US 40.	St. Charles	MO	63301	Energy	3010 3016 103c	20A
O Weldon Spring Remedial Action Project.	St Hwy 94 2 Mi S of US 40 Site Remedial Action Project, Rt. 2, Hwy 94 South.	St. Charles	MO	63301	Energy	3010 3016 103c	
C NAD Burn Pit/Yard Dump.	Sec 6 T6N R8W	Clay Center	NE	68933	Agriculture	103c	22
O NAD (Wet) Burn Pit Area.	Sec 6 T6N R8W	Clay Center	NE	68933	Army	103c	
C Section 5 Impoundment.	SW 1/4 NW 1/4 SE 1/ 4 of Sec 5.	Glenvil Township	NE		Agriculture	103c	21
O Section 5 Impoundment.	SW 1/4 NW 1/4 SE 1/ 4 of Sec 5.	Glenvil Township	NE		Interior	103c	
C BLM-Bookcliff Landfill.	T1NR101WSec6,UTEPM, 4 Mi E. of Grand Junction.	Grand Junction	CO	81501	Interior	103c	20A
O BLM-Bookcliff Landfill.	T1NR101WSec6,UTEPM	Bookcliff	CO		Interior	103c	
C BLM-Chaffee County Landfill.	T.51.N.R.8.E.Sec.21, US Hwy 285 10M North of Salida.	Salida	CO		Interior	103c	20A
O BLM-Chaffee County Landfill.	T.51.N.R.8.E.Sec.21, US Hwy 285 10M North of Salida.		CO		Interior	103c	
C BLM-Rangely Landfill.	T1NR101WSec6, 6THPM 53.5 Mi W on Hwy 64, 1 ME of Rangely.	Rangely	CO	81648	Interior	103c	20A
O BLM-Rangely Landfill.	T1NR101WSec6, 6THPM 53.5 Mi W on Hwy 64.	Rangely	CO	81648	Interior	103c	
C BLM-South Fork Landfill.	T40NR3ESec26	Southfork	CO	81144	Interior	103c	20A
O BLM-South Fork Landfill.	T40NR3ESec26	Southfork	CO		Interior	103c	
C Granby Landfill	2N77WSec26827	Granby	CO	80480	Interior	103c	20A
O BLM-Town of Granby Sanitary Landfill.	T2NR87W6THPMSec23	Granby	CO		Interior	103c	
C National Park Service, Denver Service Ctr.	755 Parfet St., Box 25287.	Denver	CO	80225	Interior	3016 103c	23
O National Park Service, Denver Service Ctr.	755 Parfet St., Box 25287.	Denver	CO	80225	Interior	3016	
C Rocky Flats Plt—US DOE.	Hwy. 93 Between Golden & Boulder.	Golden	CO	80402	Energy	3005 3010 3016 103c 103a	23
O Rocky Flats Plt—US DOE.	Hwy. 93 Between Golden & Boulder.	Golden	CO	80402	Energy	3005 3010 3016 103c	
C US Geological Survey, NWQL.	5293 Ward Rd	Denver	CO	80225	Interior	3010	20A
O US Geological Survey.	5293 Ward Rd	Denver	CO	80225	Interior	3010	
C Beaverhead N.F.	610 N. Montana St	Dillon	MT	59725	Agriculture	103c 3016	23
O Beaverhead N.F	610 N. Montana St	Dillon	MT	59725	Agriculture	103c	
C BLM—High Ore Mine.	T6NR4WSec36		MT		Interior	103c	20A
O BLM—High Ore Mine.	T7NR5WSec36		MT		Interior	103c	
C National Bison Range.	Cnty Rd 212 in Moiese	Moiese	MT	59824	Interior	3010 103c	23
O National Bison Range.	Cnty Rd 212 in Moiese	Moiese	MT	59824	Interior	3010	
C Concrete Missile Early Warning Station.	DET 1 57 AD/DE	Concrete	ND	58221	Army	103c 3010 3005	23
O Concrete Missile Early Warning Station.	DET 1 57 AD/DE	Concrete	ND	58221	Army	103c 3010	
C Defense Fuel Support Point Grand Forks.	Grand Forks AFB 42nd Street.	Grand Forks	ND	58201	Defense Logistics Agency.	3010 3016 103c	21
O Defense Fuel Support Point Grand Forks.	Grand Forks AFB 42nd Street.	Grand Forks	ND	58201	Defense	3010 3016 103c	
C Hector Air National Guard Base.	P.O. Box 5536	Fargo	ND	58105	Air Force	103c	21
O Hector Air National Guard Base.	P.O. Box 5536	Fargo	ND	58105	Defense	103c	

FEDERAL FACILITIES DOCKET—DOCKET CORRECTIONS—Continued

Facility name	Facility address	City	State	Zip Code	Agency	Reporting mechanism	Correction codes
C North Dakota Agricultural Exp. Station.	1605 W. College St	Fargo	ND	58105	Agriculture	3010 3016 103c	20A
O Red River Valley Agricultural Research Center.	1605 W. College St	Fargo	ND	58105	Agriculture	3010 3016 103c	
C Old Williston Landfill	S19 R101W T154N	Williston	ND	58801	Corps of Engineers, Civil.	3016 103c	20A
O Garrison Project/ Old Williston Landfill.	201 First St., Box 517	Riverdale	ND	58565	Corps of Engineers, Civil.	3016 103c	
C USAF-Joe Foss Field.	P.O. Box 5044	Sioux Falls	SD	57117	Air Force	103c 3016	23
O USAF-Joe Foss Field.	P.O. Box 5044	Sioux Falls	SD	57117	Air Force	103c	
C BLM-Wendover Landfill.	T1SR19WSEC3, Lots 1 & 2, 3 Mi E of Wendover.	Wendover	UT	84083	Interior	103c	20A
O BLM-Wendover Landfill.	T1SR19WSEC3, Lots 1 & 2.	Wendover	UT		Interior	103c	
C Ogden Defense Depot.	500 West 12th Street	Ogden	UT	84407-5000	Defense Logistics Agency.	3016 103c 3010	23, 21
O Ogden Defense Depot.	500 West 12th Street	Ogden	UT	84407-5000	Defense	3016 103c	
C BLM-Riverton Landfill.	T34NR96WSEC26, 1/2 Mi E of Riverton.	Riverton	WY	82501	Interior	103c	20A
O BLM-Riverton Landfill.	T34NR96WSEC26	Riverton	WY		Interior	103c	
C High Plains Grassland Research Station.	8408 Hildreth Road	Cheyenne	WY	82009	CIA	3016	21
O High Plains Grassland Research Station.	8408 Hildreth Road	Cheyenne	WY	82009	Agriculture	3016	
C Naval Magazine Guam.	APRA Hbr Hts Area by Fena Resv.	Apra Harbor	AQ	96910	Navy	103c	20A
O Naval Magazine Guam.	APRA Hbr Hts Area by Fena Resv.	Apra Harbor	GU	96910	Navy	103c	
C Arizona Air Natl Guard 162 TAC FTR GP.	1500 E. Valencia Road	Tucson	AZ	85706	Air Force	3010 103c 3016	23
O Arizona Air Natl Guard 162 TAC FTR GP.	1500 E. Valencia Road	Tucson	AZ	85706	Air Force	3010 103c	
C BLM-Duval Corp., Mineral Park Prop.	T23NR17WS18-20,30,31.	Kingman	AZ	86431	Interior	103c	20A
O BLM-Duval Corp., Mineral Park Prop.	T23NR17WS18-20,30,31.		AZ	86431	Interior	103c	
C Cyprus Sierrita Corp	T18SR12ESEC1-22	Sahuarita	AZ	85640	Interior	103c	20A
O BLM-Duval Corp., Sierrita/Esp.	T18SR12ESEC1-22		AZ	85640	Interior	3010	
C San Carlos Irrigation Project.	Crn Hwy 287 & Coolidge Blvd.	Coolidge	AZ	85228	Interior	3010	21
O San Carlos Irrigation Project.	Crn Hwy 287 & Coolidge Blvd.	Coolidge	AZ	85228	Corps of Engineers, Civil.	3010	
C Western Area Power Ad Liberty Substa.	NR Buckeye	Buckeye	AZ	85326	Energy	3010 103a	23
O Western Area Power Ad Liberty Substa.	NR Buckeye	Buckeye	AZ	85326	Energy	3010	
C Air Force Plant 19	4297 Pacific Coast Hwy	San Diego	CA	92101-5001	Air Force	103c 3016 3010	23
O Air Force Plant 19	4297 Pacific Coast Hwy	San Diego	CA	92101-5001	Air Force	103c	
C Aquatic Weed Control Research Laboratory.	3116 Wickson Hall University of Calif.	Davis	CA	95616	Agriculture	3016 103c	23
O Aquatic Weed Control Research Laboratory.	3116 Wickson Hall University of Calif.	Davis	CA	95616	Agriculture	3016	
C BLM-Afton Canyon/ Union Pacific Railroad.	T10-11R4-6SEC4-22	Afton	CA		Interior	3016 103c	23
O BLM-Afton Canyon/ Union Pacific Railroad.	T10-11R4-6SEC4-22	Afton	CA		Interior	3016	
C BLM-Simcal Chemical Corporation.	50 W. Dannenberg Rd	El Centro	CA		Interior	103c 3010	23
O BLM-Simcal Chemical Corporation.	50 W. Dannenberg Rd	El Centro	CA		Interior	103c	
C Civil Engineering Laboratory.	NCBC	Port Hueneme	CA	93043	Navy	3010 103a	23
O Civil Engineering Laboratory.	NCBC	Port Hueneme	CA	93043	Navy	3010	

FEDERAL FACILITIES DOCKET—DOCKET CORRECTIONS—Continued

Facility name	Facility address	City	State	Zip Code	Agency	Reporting mechanism	Correction codes
C Defense Fuel Supply Center Norwalk.	15306 Norwalk Blvd	Norwalk	CA	90650	Defense Logistics Agency.	3010 3016 103c	21
O Defense Fuel Supply Center Norwalk.	15306 Norwalk Blvd	Norwalk	CA	90650	Defense	3010 3016 103c	
C Defense Fuel Supply Center Ozol.	700 Carquinez Scenic Drive.	Martinez	CA	94553	Defense Logistics Agency.	3010 3016 103c	21
O Defense Fuel Supply Center Ozol.	700 Carquinez Scenic Drive.	Martinez	CA	94553	Defense	3010 3016 103c	
C Defense Fuel Supply Center San Pedro.	3171 N. Gaffey Street	San Pedro	CA	90731	Defense Logistics Agency.	3010 3016 103c	21
O Defense Fuel Supply Center San Pedro.	3171 N. Gaffey Street	San Pedro	CA	90731	Defense	3010 3016 103c	
C Fresno Horticultural Field Station.	2021 South Peach Ave	Fresno	CA	93727	Agriculture	3016 103c	23
O Fresno Horticultural Field Station.	2021 South Peach Ave	Fresno	CA	93727	Agriculture	3016	
C Goldstone Tracking Facility.	36 Mi N of Barstow at Ft Irwin.	Barstow	CA	92311	NASA	103c	20A
O NASA JPL Goldstone Tracking Facil.	36 Mi N of Barstow at Ft Irwin.	Barstow	CA	92311	NASA	103c	
C Hamilton Army Air Field.	Hamilton Army Air Field	Novato	CA	94947	Army	103c	20A
O Hamilton AFB	Hamilton Air Force Base.	Novato	CA	94947	Army	103c	
C Marine Corps Air-Ground Combat Ctr.	End of Adobe Road	Twentynine Palms	CA	92278	Navy	3010 3016 103c 103a	23
O Marine Corps Air-ground Combat Ctr.	End of Adobe Road	Twentynine Palms	CA	92278	Navy	3010 3016 103c	
C NASA DFRF	Bldg 4800 Edwards AFB.	Edwards AFB	CA	93523	NASA	103c 3016	23
O NASA DFRF	Bldg 4800 Edwards AFB.	Edwards AFB	CA	93523	NASA	103c	
C Naval Air Facility El Centro.	Route 80	El Centro	CA	92234	Navy	3005 3010 103c 3016	23
O Naval Air Facility El Centro.	Route 80	El Centro	CA	92234	Navy	3005 3010 103c	23
C Naval Air Station Lemoore.	Naval Air Station	Lemoore	CA	93245	Navy	3010 3016 103c 103a	
O Naval Air Station Lemoore.	Naval Air Station	Lemoore	CA	93245	Navy	3010 3016 103c	
C Naval Air Station Miramar.	Miramar Naval Air Station.	San Diego	CA	92145	Navy	3010 103c 3016	23
O Naval Air Station Miramar.	Miramar Naval Air Station.	San Diego	CA	92145	Navy	3010 103c	
C Naval Air Station North Island.	P.O. Box 14	San Diego	CA	92136-5118	Navy	3005 3010 3016 103c 103a	23
O Naval Air Station North Island.	P.O. Box 14	San Diego	CA	92136-5118	Navy	3005 3010 3016 103c	
C Naval Air Station North Island—Sere Camp/Warnes.	P.O. Box 14	San Diego	CA		Navy	103c	20A
O Fleet Aviation Spec Operational Training Group.		Warner Springs	CA		Navy	103c	
C Naval Amphibious Base Coronado.	On Route 75 on the Strand.	San Diego	CA	91255	Navy	3010 103c 3016	23
O Naval Amphibious Base Coronado.	On Route 75 on the Strand.	San Diego	CA	91255	Navy	3010 103c	
C Naval Communications Station Imperial Beach.	Outlying Landing Field Bldg 162 Rt 75 & Palm Ave.	Imperial Beach	CA	92032	Navy	3005 3010 103c 103a	23
O Naval Communications Station Imperial Beach.	Outlying Landing Field Bldg 162 Rt 75 & Palm Ave.	Imperial Beach	CA	92032	Navy	3005 3010 103c	
C Naval Ocean Systems Center.	Hwy 39	Azusa	CA	91702	Navy	3010 3016	23
O Naval Ocean Systems Center.	Hwy 39	Azusa	CA	91702	Navy	3010	
C Naval Petroleum Reserve #1.	Elk Hills, P.O. Box 11	Tupman	CA	93276	Energy	3016 103c 3010	23
O Naval Petroleum Reserve #1.	Elk Hills, P.O. Box 11	Tupman	CA	93276	Energy	3016 103c	

FEDERAL FACILITIES DOCKET—DOCKET CORRECTIONS—Continued

Facility name	Facility address	City	State	Zip Code	Agency	Reporting mechanism	Correction codes
C Naval Radio Transmitting Facility.	Radio Station Road	Dixon	CA	95620	Navy	103c	20A
O Naval Communication Station Dixon.	Radio Station Road	Dixon	CA	95620	Navy	103c	
C Naval Shipyard Mare Island.	W. End of Tennessee St.	Vallejo	CA	94592	Navy	3005 3010 3016 103c 103a	23
O Naval Shipyard Mare Island.	W. End of Tennessee St.	Vallejo	CA	94592	Navy	3005 3010 3016 103c	
C Naval Training Center San Diego.	Rosencranz & Nimitz Blvds.	San Diego	CA	92133	Navy	3010 103c 3016	23
O Naval Training Center San Diego.	Rosencranz & Nimitz Blvds.	San Diego	CA	92133	Navy	3010 103c	
C Norton Air Force Base.	63ABG/CC	Norton AFB	CA	92409	Air Force	3005 3010 3016 103c 103a	23
O Norton Air Force Base.	63ABG/CC	Norton AFB	CA	92409	Air Force	3005 3010 3016 103c	
C Plumas Nat'l Forest	159 Lawrence St. Box 11500.	Quincy	CA	95971-6025	Agriculture	103c 3016	23
O Plumas Nat'l Forest	159 Lawrence St. Box 11500.	Quincy	CA	95971-6025	Agriculture	103c	
C San Clemente Island.	Building 60130 San Clemente Island.	San Clemente	CA	92136	Navy	103c	20a
O Naval Auxiliary Landing Field.	Buiding 60130 San Clemente Island.	San Clemente	CA	92136	Navy	103c	
C San Diego Fleet Anti-Submarine Warfare Training Ct.	Harbor Drive	San Diego	CA	92147	Navy	103c	20A
O Fleet Anti-Submarine Warfare Training Ctr.	Harbor Drive	San Diego	CA	92147	Navy	103c	
C Sharpe Army Depot	Roth Rd	Lathrop	CA	95331	Army	3005 3010 3016 103c 103a	23
O Sharpe Army Depot	Roth Rd	Lathrop	CA	95331	Army	3005 3010 3016 103c	
C Shasta-Trinity N.F	2400 Washington Avenue.	Redding	CA	96001	Agriculture	103c 3016	23
O Shasta-Trinity N.F	2400 Washington Avenue.	Redding	CA	96001	Agriculture	103c	
C Sierra Nat'l Forest	1130 O St. Room 3017	Fresno	CA	93721	Agriculture	103c 3016	23
O Sierra Nat'l Forest	1130 O St. Room 3017	Fresno	CA	93721	Agriculture	103c	
C US Postal Service	5800 W Century Blvd	Los Angeles	CA	90009	Postal Service	3010 103a	23
O US Postal Service	5800 W Century Blvd	Los Angeles	CA	90009	Postal Service	3010	23
C Vandenberg AFB	1 STRAD/ET	Lompoc	CA	93436	Air Force	3005 3010 3016 103c 103a	23
O Vandenberg AFB	1 STRAD/ET	Lompoc	CA	93436	Air Force	3005 3010 3016 103c	
C Camp H M Smith	Halawa Heights Rd	Camp Smith	HI	96861	Navy	3010 3016	23
O Camp H M Smith	Halawa Heights Rd	Camp Smith	HI	96861	Navy	3010	
C Kaala AFS	Taxiway 5 & Kamakahi St.	Honolulu	HI		Air Force	103c 3016	23
O Kaala AFS	Taxiway 5 & Kamakahi St.	Honolulu	HI		Air Force	103c	
C Kaena Pt Sat Tracking Sta.	33 Mi NW of Honolulu on Rte 930.	Waianae	HI	96792	Air Force	103c 3016	23
O Kaena Pt Sat Tracking Sta.	33 Mi NW of Honolulu on Rte 930.	Waianae	HI	96792	Air Force	103c	
C Kokee Air Force Station.	Kokee State Park	Waimea	HI	96796	Air Force	103c 3016	23
O Kokee Air Force Station.	Kokee State Park	Waimea	HI	96796	Air Force	103c	
C Naval Communication Area Master Station.	Eastern Pacific Area	Honolulu	HI		Navy	3016 103c	20A
O Naval Communication Area Master Station, Eastern.		Honolulu	HI		Navy	3016 103c	
C Naval Submarine Base.		Pearl Harbor	HI	96860	Navy	3010 103a	23
O Naval Submarine Base.		Pearl Harbor	HI	96860	Navy	3010	
C Pearl Harbor Naval Supply Center.	Naval Base	Pearl Harbor	HI	96860	Navy	3005 3010 103c 3016	23
O Pearl Harbor Naval Supply Center.	Naval Base	Pearl Harbor	HI	96860	Navy	3005 3010 103c	
C Punamano Air Force Station.	28 Mi NNE Honolulu on Rte 83.	Kahuku	HI	96731	Air Force	103c 3016	20A, 23

FEDERAL FACILITIES DOCKET—DOCKET CORRECTIONS—Continued

Facility name	Facility address	City	State	Zip Code	Agency	Reporting mechanism	Correction codes
O Punamano Air Force.	28 Mi NNE Honolulu on Rte 83.	Kahuku	HI	96731	Air Force	103c	
C Wheeler AFB	Base Civil Engineer	Oahu	HI	96854	Air Force	3010 3016 103c	20A
O Wheeler AFB	Base Civil Engineer	Wheeler AFB	HI	96854	Air Force	3010 3016 103c	
C BLM-Antelope Valley Pesticide Site.	T25NR42ESEC18	Lander	NV	89310	Interior	103c 3016	23
O BLM-Antelope Valley Pesticide.	T25NR42ESEC18	Lander	NV	89310	Interior	103c	
C BLM-Bunker Hill Co	T1NR67ESEC29	Lincoln	NV		Interior	103c 3016	23
O BLM-Bunker Hill Co	T1NR67ESEC29	Lincoln	NV		Interior	103c	
C BLM-McDermitt Mine.	T47NR37ESEC20212729	Humboldt	NV		Interior	103c 3010	23
O BLM-McDermitt Mine.	T47NR37ESEC20212729	Humboldt	NV		Interior	103c	
C BLM-Quinn River Valley.	T43NR36ESEC18	Humboldt	NV	89445	Interior	103c 3016	23
O BLM-Quinn River Valley.	T43NR36ESEC18	Humboldt	NV	89445	Interior	103c	
C Hoover Dam		Boulder City	NV	89005	Interior	3010 3016	23
O Hoover Dam		Boulder City	NV	89005	Interior	3010	
C Humbolt N.F	976 Mountain City Hwy	Elko	NV	89801	Agriculture	103c 3016	23
O Humbolt N.F	976 Mountain City Hwy	Elko	NV	89801	Agriculture	103c	
C Toiyabe National Forest.	1200 Franklin Way	Sparks	NV	89431	Agriculture	103c 3016	23
O Toiyabe National Forest.	1200 Franklin Way	Sparks	NV	89431	Agriculture	103c	
C Amchitka Island	51-32 N 179-00 E	Amchitka Island	AK	99502	Interior	3010 3016	23
O Amchitka Island	51-32 N 179-00 E	Amchitka Island	AK	99502	Interior	3010	
C Anvil Mountain	Anvil Mt 6.5 Mi N of Nome.	Nome	AK	99762	Air Force	103c 3016	23
O Anvil Mountain	Anvil Mt 6.5 MI N of Nome.	Nome	AK	99762	Air Force	103c	
C Big Mountain AFS	S Shoure Iliamna/S Side Big Mtn.	Big Mountain AFS	AK	99501	Air Force	3010 103c 3016	23
O Big Mountain AFS	S Shoure Iliamna/S Side Big Mtn.	Big Mountain AFS	AK	99501	Air Force	3010 103c	
C BLM-Pump Station 12 Dump Site.	T.4.S.,R.1.E.,Sec 26	Copper Center	AK		Interior	103c	20A
O BLM-Pump Station 12 Dump Site.	T.4.S.,R.1.E.,Sec 26		AK		Interior	103c	
C BLM-Tangle Lakes Dump Site.	Mile 22 Denali Hwy	Paxson	AK		Interior	103c	20A
O BLM-Tangle Lakes Dump Site.	Mile 22 Denali Hwy		AK		Interior	103c	
C Cape Romanzof AFS.	11 TCW/CC	Elmendorf	AK	99506	Air Force	3010 103c 3016	23
O Cape Romanzof AFS.	11 TCW/CC	Elmendorf	AK	99506	Air Force	3010 103c	
C Denali National Park and Preserve.	PO Box 9	Denali Park	AK		Interior	3016 103c	23
O Denali National Park and Preserve.	PO Box 9	Denali Park	AK		Interior	3016	
C Fort Greely		Fort Greely	AK	98733	Army	3016 103c	23
O Fort Greely		Fort Greely	AK	98733	Army	3016	
C Fort Richardson	Army Guard Rd & Davis Hwy.	Fort Richardson	AK	99505	Army	3005 3010 3016 103c	23
O Fort Richardson	Army Guard Rd & Davis Hwy.	Fort Richardson	AK	99505	Army	3005 3010 3016	
C Fort Yukon AFS	N of Yllota Slough	Fort Yukon	AK	99740	Air Force	3010 103c 3016	23
O Fort Yukon AFS	N of Yllota Slough	Fort Yukon	AK	99740	Air Force	3010 103c	
C Glacier Bay National Park and Preserve.	PO Box 140	Gustavus	AK	99826	Interior	3016 103c	23
O Glacier Bay National Park and Preserve.	PO Box 140	Gustavus	AK	99826	Interior	3016	
C Indian Mountain AFS.	11 TCW/CC	Elmendorf AFB	AK	99506	Air Force	3010 103c 3016	23
O Indian Mountain AFS.	11 TCW/CC	Elmendorf AFB	AK	99506	Air Force	3010 103c	
C Port Moller	55 59'22" N 160 34' 29.374" W Alaska Peninsula.	Port Moller	AK	99999	Air Force	3010 103c 3016	23
O Port Moller	55 59'22" N 160 34' 29.374" W Alaska Peninsula.	Port Moller	AK	99999	Air Force	3010 103c	
C Sparrenvohn AFS	11 TCW/CC	Elmendorf AFB	AK	99506	Air Force	3010 103c 3016	23
O Sparrenvohn AFS	11 TCW/CC	Elmendorf AFB	AK	99506	Air Force	3010 103c	
C Tin City AFS	11 TCW/CC	Elmendorf AFB	AK	99506	Air Force	3010 103c 3016	23
O Tin City AFS	11 TCW/CC	Elmendorf AFB	AK	99506	Air Force	3010 103c	

FEDERAL FACILITIES DOCKET—DOCKET CORRECTIONS—Continued

Facility name	Facility address	City	State	Zip Code	Agency	Reporting mechanism	Correction codes
C USAF-Bear Creek AFS Landfill.	Yukon River on N Shore.	Tanana	AK	99777	Air Force	103c 3010 3016	23
O USAF-Bear Creek AFS Landfill.	Yukon River on N Shore.	Tanana	AK	99777	Air Force	103c	
C USAF-Driftwood Bay AFS.	N Coast Unalaska Island.	Driftwood Bay	AK	99553	Air Force	103c 3016	23
O USAF-Driftwood Bay AFS.	N Coast Unalaska Island.	Driftwood Bay	AK	99553	Air Force	103c	23
C USAF-Granite Mountain AFS Ldfl.	14 Mi NW of CY	Haycock	AK	99762	Air Force	103c 3010 3016	23
O USAF-Granite Mountain AFS Ldfl.	14 Mi NW of CY	Haycock	AK	99762	Air Force	103c	
C USAF-Kalakaket Creek.	S Shore of Kala Creek	Galena	AK	99741	Air Force	3010 103c 3016	23
O USAF-Kalakaket Creek.	S Shore of Kala Creek	Galena	AK	99741	Air Force	3010 103c	
C USAF-Nikolski AFS Ldfl.	W Coast of Umnak IS	Nikolski	AK	99638	Air Force	103c 3016	23
O USAF-Nikolski AFS Ldfl.	W Coast of Umnak IS	Nikolski	AK	99638	Air Force	103c	
C USAF-North River AFS.	Mouth of North River	Unalakleet	AK	99684	Air Force	103c 3016	23
O USAF-North River AFS.	Mouth of North River	Unalakleet	AK	99684	Air Force	103c	
C USAF-Port Heiden AFS.	NW Shore of Heiden Bay.	Port Heiden	AK	99549	Air Force	103c 3016 3010	23
O USAF-Port Heiden AFS.	NW Shore of Heiden Bay.	Port Heiden	AK	99549	Air Force	103c	
C USAF-White Alice Site Kotzebue.	NW Corner of Baldwin Peninsula.	Kotzebue	AK	99752	Air Force	103c 3016	23
O USAF-White Alice Site Kotzebue.	NW Corner of Baldwin Peninsula.	Kotzebue	AK	99752	Air Force	103c	
C USDOI-FWS Brownlow Point Dewline Site.	Barrow, 265 Mi SE	Barrow	AK	99723	Interior	103c 3016	23
O USDOI-FWS Brownlow Point Dewline Site.	Barrow, 265 Mi SE	Barrow	AK	99723	Interior	103c	
C USDOI-FWS Demarcation Point Dew Line.	Barrow, 380 Mi SE	Barrow	AK	99723	Interior	103c 3016	23
O USDOI-FWS Demarcation Point Dew Line.	Barrow, 380 Mi SE	Barrow	AK	99723	Interior	103c	
C USDOT-FAA Biorka Island.	6 Mi W of Sitka	Sitka	AK	99835	Transportation	3010 3016 103c	23
O USDOT-FAA Biorka Island.	6 Mi W of Sitka	Sitka	AK	99835	Transportation	3010 3016	
C Wrangell-St Elias National Park.	Wrangell-St Elias National Park.	Glennallen	AK	99588	Interior	3016 103c	20A
O NPS Malaspina Drilling Mud Site.	Wrangell-St Elias National Park.	Glennallen	AK	99588	Interior	3016 103c	
C BLM-German Lake	T7SR25ESEC.10	Minidoka	ID	83343	Interior	103c 3016	23
O BLM-German Lake	T7SR25SEC.10	Minidoka	ID	83343	Interior	103c	
C BLM-Twin Falls Co Murtaugh (East) Landfill.	T11SR19ESEC10	Twin Falls	ID	83301	Interior	103c 3016	23, 20A
O BLM-Twin Falls Co Murtaugh (East) Landfill.	T11SR19ESEC10	Twin Falls	ID	83301	Interior	103c	
C Idaho Panhandle National Forests.	1201 Ironwood Dr.	Coeur D'Alene	ID	83814	Agriculture	3016 3010 103c	23
O Idaho Panhandle National Forests.	1201 Ironwood Dr.	Coeur D'Alene	ID	83814	Agriculture	3016	
C Soil and Water Management Research Unit.	Route 1, Box 186, 3600 East.	Kimberly	ID	83341	Agriculture	3016 103c	23
O Soil and Water Management Research Unit.	Route 1, Box 186, 3600 East.	Kimberly	ID	83341	Agriculture	3016	
C U.S. Sheep Experiment Station.	HC 62, Box 2010	Dubois	ID	83423	Agriculture	3016 103c	23
O U.S. Sheep Experiment Station.	HC 62, Box 2010	Dubois	ID	83423	Agriculture	3016	
C USDOE Idaho Nat'l Engineering Lab.	US Hwy 20/26, 40 Mi West of Idaho Falls.	Scoville	ID	83401	Energy	3005 3010 3016 103c 103a	23
O USDOE Idaho Nat'l Engineering Lab.	US Hwy 20/26, 40 Mi West of Idaho Falls.	Scoville	ID	83401	Energy	3005 3010 3016 103c	

FEDERAL FACILITIES DOCKET—DOCKET CORRECTIONS—Continued

Facility name	Facility address	City	State	Zip Code	Agency	Reporting mechanism	Correction codes
C Ochoco National Forest.	T14S R20E WM Sec 20 SW ¼.	Ochoco National Forest	OR		Agriculture	103c	20A
O Motherlode Mine	T14S R20E WM Sec 20 SW ¼.	Ochoco National Forest	OR		Agriculture	103c	
C USA-COE Astoria Field Office.	Hwy 30 & Maritime Rd	Astoria	OR	97103	Corps of Engineers, Civil.	3010 3016	23
O USA-COE Astoria Field Office.	Hwy 30 & Maritime Rd	Astoria	OR	97103	Corps of Engineers, Civil.	3010	
C USA-COE Bonneville Dam.	N of CY on RIV	Bonneville	OR	97008	Corps of Engineers, Civil.	3010 103a 3016	23
O USA-COE Bonneville Dam.	N of CY on RIV	Bonneville	OR	97008	Corps of Engineers, Civil.	3010	
C USAF-Portland Air National Guard Base.	6801 NE Corn Foot Rd	Portland	OR	97208	Air Force	103c 3016	23
O USAF-Portland Air National Guard Base.	6801 NE Corn Foot Rd	Portland	OR	97208	Air Force	103c	
C Grand Coulee Dam Project.	PO Box 620	Grand Coulee	WA	99133	Interior	3010 3016	23
O Grand Coulee Dam Project.	PO Box 620	Grand Coulee	WA	99133	Interior	3010	
C Naval Shipyard Puget Sound.	1st Street Code 106	Bremerton	WA	98314	Navy	3005 3010 3016 103c 103a	23
O Naval Shipyard Puget Sound.	1st Street Code 106	Bremerton	WA	98314	Navy	3005 3010 3016 103c	
C USArmy Yakima Firing Center.	Yakima Firing Center	Yakima	WA	98901	Army	3005 3010 3016	23
O USArmy Yakima Firing Center.	Yakima Firing Center	Yakima	WA	98901	Army	3005 3010	
C USDOD-DLA Defense Fuel Support PT.	Front St & Loveland Ave.	Mukilteo	WA	98275	Defense	3010 3016 103c	21
O USDOD-DLA Defense Fuel Support PT.	Front St & Loveland Ave.	Mukilteo	WA	98275	Defense	3010 3016 103c	
C USDOE-BPA Bell Substation.	E 2400 Hawthorne Rd	Mead	WA	98021	Energy	3010 3016 103c 103a	23
O USDOE-BPA Bell Substation.	E 2400 Hawthorne Rd	Mead	WA	98021	Energy	3010 3016 103c	
C USDOE-BPA Olympia Substation.	5340 Trosper Road SW	Olympia	WA	98502	Energy	3010 3016 103c 103a	23
O USDOE-BPA Olympia Substation.	5340 Trosper Road SW	Olympia	WA	98502	Energy	3010 3016 103c	
C USDOE-BPA Snohomish Substation.	10th & Avenue D	Snohomish	WA	98290	Energy	3010 3016 103c 103a	23
O USDOE-BPA Snohomish Substation.	10th & Avenue D	Snohomish	WA	98290	Energy	3010 3016 103c	
C Yakima Agricultural Res LAV-U.	3706 W Nob Hill Blvd	Yakima	WA	98902	Agriculture	3010 3016 103c	23
O Yakima Agricultural Res LAV-U.	3706 W Nob Hill Blvd	Yakima	WA	98902	Agriculture	3010 3016	

FEDERAL FACILITIES DOCKET—DOCKET DELETIONS

Facility name	Facility address	City	State	Zip Code	Agency	Reporting mechanism	Correction code
Alaska Maritime National Wildlife Refuge.	51'30"N/179'15"		AK		Interior	3016	6
USDOI-BIA Annette Island Airport.	Annette Airport	Annette	AK	99920	Interior	3016 103c	1
USDOI-BIA Moses Point.	Moses Point	Moses Point	AK	99762	Interior	3016 103c	1
Western Area Power AD Cochise Substa.	12 Mi S of	Willcox	AZ	85643	Energy	3010	1
Western Area Power Ad Coolidge Substa.	1 Mi n of	Coolidge	AZ	85228	Energy	3010	1
Western Area Power Ad ED-2 Substa.	2 Mi S of	Coolidge	AZ	85228	Energy	3010	1
Western Area Power Ad Gila Substa.	15 Mi E of Yuma	Yuma	AZ	85364	Energy	3010	1
Western Area Power Ad Mesa Substa.	Mesa	Mesa	AZ	85200	Energy	3010	1
Western Area Power Ad Parker Substa.	Parker	Parker	AZ	85344	Energy	3010	1

FEDERAL FACILITIES DOCKET—DOCKET DELETIONS—Continued

Facility name	Facility address	City	State	Zip Code	Agency	Reporting mechanism	Correction code
Western Area Power Ad Phoenix Substa.	43rd Ave & Buckey	Phoenix	AZ	85005	Energy	3010	1
Western Area Power Ad Pinnacle Peak SB.	NW of Scottsdale	Scottsdale	AZ		Energy	3010	1
Western Area Power Ad Prescott Substa.	3 Mi N of	Prescott	AZ	86301	Energy	3010	1
Western Area Power Ad Tucson Substa.	1 MI NW of	Tucson	AZ	87000	Energy	3010	1
Bur of Ind Affrs Colorado Riv Agency.	Agency Rd	Parker	AZ	85344	Interior	3010	1
Colorado River Indian Agency.	Rt 3 1st Ave & Agency Rd.	Parker	AZ	85344	Interior	3010	1
Fed Correc Inst Safford	Swift Trail Route 366	Safford	AZ	85546	Justice	3010	1
CA Air Natl Guard 163rd TASGP.	Ontario Angb	Ontario	CA	91761	Air Force	3010	6
Davis Transmitter Site	Davis	Davis	CA		Air Force	103c	7
North Highlands Air Natl Gurad Sta.	162 CISQ/DEM 3900 Roseville.	North Highlands	CA	95660	Air Force	3010	1
Ontario Air National Guard Base.	2500 Acaica St	Ontario	CA	91761	Air Force	3010	1
Sepulveda Air National Guard Station.	15900 West Victory Blvd.	Van Nuys	CA	91406	Air Force	3010	1
Space Program Facility		Vandenberg AFB	CA	93437	Air Force	3010	4
Western Area Power Ad Blythe Subste.	5 Miles W of Blythe at US60&70.	Blythe	CA	92225	Energy	3010	1
Western Area Power Ad Shasta Line Main.	Keswick Dan Road	Redding	CA	96001	Energy	3010	1
Western Area Pwr Ad Elverta FLD SP.	Elverta Rd	Elverta	CA	95626	Energy	3010	1
BLM-Stateline Dump	T48NR6ESEC18	Stateline	CA		Interior	3016	6
Federal Correction Institution.	5701 8th St Camp Parks.	Dublin	CA		Justice	103c 3010	1
Federal Prison Ind Inc	Terminal Is	San Pedro	CA	90731	Justice	3010	1
Naval Industrial Reserve Ordinance Plant.	111 Lockheed Way	Sunnyvale	CA		Navy	103c	6
US Assay Office	Unit 2 1070 San Mateo Ave.	South San Francisco	CA	94102	Treasury	3010	1
Veterans Admin Med Center.	16111 Plummer St	Sepulveda	CA	91343	Veterans Administration	3010	1
Drug Enforcement Administration.	721 19th Street	Denver	CO	80202	Justice	3010	1
UNICOR Federal Prison Ind Inc.	Rte 37	Danbury	CT	06810	Justice	3010	1
Federal Correctional Institution.	100 FCI Road	Marianna	FL	32446	Justice	3010	1
US Postal Serv VMF	2250 NW 72nd Ave	Miami	FL	33152	Postal Service	3010	1
United States Penitentiary-Atlanta, GA.	615 McDonough Blvd	Atlanta	GA	30315	Justice	3016	1
Kaala Air Force Station	Taxiway 5 & Kamakahi	Honolulu	HI	98653	Air Force	3016	6
Kaina Point Satellite Tracking Station.	33 Mi NW Honolulu Rte. 930.	Waianae	HI	96792	Air Force	3016	6
Kokee AFS	Kokee St. Pk	Waimea	HI	96796	Air Force	3016	6
Punamano Air Force Station.	28 Mi NNE Honolulu Rte. 83.	Kahuku	HI	96731	Air Force	3016	6
Kauai Test Facility	PO Box 478	Waimea	HI	96796	Energy	103c	6
Fort Des Moines	Fort Des Moines	Des Moines	IA		Army	103a	7
O'Hare ARFF	928 TAG/DE	O'Hare ARFF	IL	60666	Air Force	3016	7
US Air Force 183 Tactical Fighter Group.	Capitol Airport	Springfield	IL	62707	Air Force	3005 3010 3016	2
Wisconsin Steel	E. 106th & Torrence Avenue.	Chicago	IL		Commerce	3005 3010 3016	2
Olin Corp	Rte 148 S Ordill I Area	Marion	IL	62959	Interior	3010	6
Unicor Federal Prison Industry.	Little Grassy Rd	Marion	IL	62959	Justice	3010	1
Federal Correctional Institute—Lexington.	FCI	Lexington	KY	40511	Justice	3016	1
Federal Corrections Institution—Ashland.	FCI, Ashland	Ashland	KY	41101	Justice	3016	1
VA Medical Center #512.	3900 Loch Raven Blvd	Baltimore	MD	21218	Veterans Administration	3010	1
Milan Federal Correction Institute.	Anoona Road	Milan	MI		Justice	103a	1
Brainerd Foundry	10th & Pine Streets	Brainerd	MN		Commerce	3010 3016	3
Missouri Air National Guard.	Rosecrans Memorial Airport.	St Joseph	MO		Air Force	103c	2
Mt Air National Guard	International Airport	Great Falls	MT	59401	Air Force	3010	2

FEDERAL FACILITIES DOCKET—DOCKET DELETIONS—Continued

Facility name	Facility address	City	State	Zip Code	Agency	Reporting mechanism	Correction code
Tuscon/Hebrew Academy.	NW ¼ Section 26, T 37N, R 9W.		MT		Interior	103c	2
Veterans Admin. Med. Center.	1601 Brenner Ave	Salisbury	NC	28144	Veterans Administration	3010	1
Melrose Air Force Range.	Cannon AFB	Melrose	NM	88124	Air Force	3016	6
US DOE—Los Alamos Scientific Lab.	West Jemez Road	Los Alamos	NM	87544	Energy	103a	6
Nevada Air National Guard CEF.	1776 National Guard Way.	Reno	NV	89502	Air Force	3010	1
Western Area Power Ad Basic Substation.	Basic Management Complex.	Henderson	NV	89015	Energy	3010	1
Western Area Power Mead Substation.	3 Miles SW of Boulder City.	Boulder City	NV	89005	Energy	3010	1
Antelope Valley Pesticide Cont. Disp.			NV		Interior	3016	6
Lower Colorado Dams Project Office—Hoover Dam.		Boulder City	NV	89005	Interior	3016	6
Pioche Mine Tailings Site.	T1NR67E,SEC32	Lincoln County	NV		Interior	103c	6
Quinn River Valley Pesticide Cont.			NV		Interior	3016	6
Reno Research Center-Bureau of Mines.	1605 Evans Avenue	Reno	NV	89520	Interior	3010	1
Solar Evaporation Test Facility.		Henderson	NV	89015	Interior	3010	1
Federal Correctional Institution.	P.O. Box 600	Otisville	NY	10963	Justice	3010	1
Veterans Administration Medical Center.	3495 Bailey Avenue	Buffalo	NY	14215	Veterans Administration	3010	1
US DOE	US Rt 23	Piketon	OH		Energy	103a	6
Federal Correctional Institution—El Reno, OK.	West Highway 66	El Reno	OK	73036	Justice	3016	1
DOC ECON DEV ADM-ROBIN Footwear Facility.	208 N Division St	Mt Union	PA	17066	Commerce	3016	3
Pittsburgh Research Center	626 Cochrans Mill Road	Bruceton	PA	15236	Interior	3016	1
Tinicum National Environmental Center.	Suite 104 Scott PZ 2	Philadelphia	PA	19113	Interior	3016 103c	6
VA Medical & Regional Office.	Bo Monacillos	Rio Piedras	PR	00928	Veterans Administration	3010	1
Armed Forces Reserve Center.	One Narragansett St—Fields Point.	Cranston	RI	02910	Army	3010	1
US Postal Service Veh Maint Fac.	4290 Daley Avenue	Charleston	SC	29401	Postal Service	3010	1
BIA—Cheyenne River Agency.	Land Ops Shop—Bldg #2010.	Eagle Butte	SD	57625	Interior	3010	1
Federal Prison Camp Yankton.	1200 Douglas	Yankton	SD	57078	Justice	3010	1
US DOE Univ of Tennessee Space Inst.	Milepost 12 Utsi Rd	Tullahoma	TN	37388	Energy	3010	2
US Army McAllen Reserve Center.	600 South Second	McAllen	TX	78501	Army	3016 103c	1
Federal Correctional Institution—Bastrop, TX.	Highway 95	Bastrop	TX	78602	Justice	3016	6
US DOJ Fed Cor Inst Prison Industry FTWT.	3150 Horton Rd	Ft Worth	TX	76119	Justice	3010	1
Ireco, Inc.	Along Utah Lake	Near Lehi	UT		Interior	3016	6
Salt Lake City Research Center	729 Arapeen Dr	Salt Lake City	UT	84108	Interior	3016	1
EPA Environmental Photographic Interpretation Ctr	Bldg 166—Vint Hill Farm Station.	Warrenton	VA	22186	EPA	3010 3016	6
Eastern Shore of VA National Wildlife Refuge.	RFD1 Box 122B	Cape Charles	VA	23310	Interior	3010	6
Federal Correctional Inst.	State Rte 645	Petersburg	VA	23804	Justice	3010	1
USDOC-NOAA Pacific Marine Center	1801 Fairview Ave E	Seattle	WA	98102	Commerce	3010 3016	1
USDOC-NOAA Western Regional Center.	7600 Sandpoint Way	Seattle	WA	98115	Commerce	3010 3016	1
USVA Medical Center—American Lake.	T19N R2E S8,17	Tacoma	WA	98493	Veterans Administration	3010	6

FEDERAL FACILITIES DOCKET—DOCKET DELETIONS—Continued

Facility name	Facility address	City	State	Zip Code	Agency	Reporting mechanism	Correction code
Unicor Federal Prison Industries Inc.	Off Elk Ave	Oxford	WI	53952	Justice	3010	1
High Plains Grassland Research Station (HPGRS).	8408 Hildreth	Cheyenne	WY	82009	CIA	3016	6
VA Medical Ctr	None Per V.A.M.C.	Sheridan	WY	82801	Veterans Administration	103c	1

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federal register

Thursday
December 12, 1991

Part V

Department of Defense
General Services Administration
National Aeronautics and Space Administration

48 CFR Parts 35 and 52
Federal Acquisition Regulation; Research and Development Contracting; Proposed Rule

DEPARTMENT OF DEFENSE

GENERAL SERVICES ADMINISTRATION

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

48 CFR Parts 35 and 52

[FAR Case 91-56]

Federal Acquisition Regulation; Research and Development Contracting

AGENCIES: Department of Defense (DOD), General Services Administration (GSA), and National Aeronautics and Space Administration (NASA).

ACTION: Proposed rule.

SUMMARY: The Civilian Agency Acquisition (CAA) and the Defense Acquisition Regulations (DAR) Councils are considering major revisions to FAR part 35 resulting from recommendations made by the Defense Management Review Regulatory Relief Task Force. The proposed additions are a result of language being deleted from the Defense FAR Supplement for more appropriate insertion in the FAR since it is applicable to all Federal buying activities.

DATES: Comments should be submitted to the FAR Secretariat at the address shown below on or before February 10, 1992, to be considered in the formulation of a final rule.

ADDRESSES: Interested parties should submit written comments to: General Services Administration, FAR Secretariat (VRS), 18th & F Streets, NW., room 4041, Washington, DC 20405.

Please cite FAR case 91-56 in all correspondence related to this case.

FOR FURTHER INFORMATION CONTACT: Mr. Jack O'Neill at (202) 501-3856 in reference to this FAR case. For general information, contact the FAR Secretariat, room 4041, GS Building, Washington, DC 20405, (202) 501-4755. Please cite FAR case 91-56.

SUPPLEMENTARY INFORMATION:

A. Background

Because several changes were being considered for FAR Part 35 as a result of the Defense Management Review, the CAAC and DARC considered rewriting the entire FAR part 35. The proposed rule is a result of a review of the entire FAR part 35 by both Councils. FAR 35.003 is revised to state the contractor's contribution to the cost of performing the research should be considered when determining the agreed upon portion of costs to be reimbursed unless it is concluded that cost sharing would not be appropriate under certain circumstances. Section 35.007 is revised to state that work details, provided to prospective offerors through preproposal conferences or draft solicitations, may include the Government estimate of the man-year effort under a research contract. Section 35.009 is revised to correct a FAR reference "44.204(c)" to read "44.204(b)" and to clarify the requirements of FAR 52.244-2 for contractors to obtain advance notification and/or consent, rather than prior approval, for the placement of a substantial cost-reimbursement subcontract that has experimental, developmental, or research work as one of its purposes. Section 35.010 is revised by deleting guidance on submitting scientific or technical reports and prescribing a clause for that purpose. Section 35.018 is added to prescribe six new clauses.

B. Regulatory Flexibility Act

The proposed changes to FAR part 35 may have a significant economic impact on a substantial number of small entities within the meaning of the Regulatory Flexibility Act, 5 U.S.C. 601 *et seq.*, because several new reporting and recordkeeping burdens are imposed on research contractors. An Initial Regulatory Flexibility Analysis (IRFA) has been prepared and is summarized as follows:

The proposed rule is the effort of both the Civilian Agency Acquisition and Defense Acquisition Regulations Councils to rewrite part 35 with application to research and development contracting. The proposed rule applies to both large and small businesses; exact numbers are unknown. There are no relevant Federal rules that conflict with, duplicate, or overlap this rule. Burdens regarding Frequency Authorization, Acknowledgement and Support of Disclaimer, and Program Reports are discussed. A copy of the Initial Regulatory Flexibility Analysis (IRFA) has been submitted to the Chief Counsel for Advocacy of the Small Business Administration. A copy of the IRFA may be obtained from the FAR Secretariat. Comments are invited. Comments from small entities concerning the affected FAR subpart will also be considered in accordance with section 610 of the Act. Such comments must be submitted separately and cite 5 U.S.C. 601, *et seq.* (FAR Case 91-56) in correspondence.

C. Paperwork Reduction Act

The Paperwork Reduction Act (Pub. L. 96-511) is deemed to apply because the proposed rule contains information collection requirements. Accordingly, a request for approval of a new information collection requirement concerning research and development contracting is being submitted to the Office of Management and Budget under 44 U.S.C. 3501, *et seq.* Public comments concerning this request will be invited through a subsequent **Federal Register** notice.

List of Subjects in 48 CFR Parts 35 and 52

Government procurement.

Dated: December 6, 1991.

Albert A. Vicchiolla,

Director, Office of Federal Acquisition Policy.

Therefore, it is proposed that 48 CFR parts 35 and 52 be amended as set forth below:

PART 35—RESEARCH AND DEVELOPMENT CONTRACTING

1. The authority citation for 48 CFR parts 35 and 52 continues to read as follows:

Authority: 40 U.S.C. 486(c); 10 U.S.C. chapter 137; and 42 U.S.C. 2473(c).

2. Section 35.003 is amended by adding paragraphs (b)(1) through (b)(4) to read as follows:

35.003 Policy.

* * * * *

(b) * * *

(1) Cost sharing policies (which are not otherwise required by law) under Government contracts shall be in accordance with sections 16.303, 42.707(a), and agency procedures.

(2) Contractor contribution to the cost of performing research shall be used if required by law and should be considered unless it is concluded that cost sharing would not be appropriate for one of the following reasons:

(i) The particular research objective or scope of effort for the contract is specified by the Government rather than proposed by the contractor.

(ii) The contractor is an educational institution or nonprofit organization.

(3) The amount of cost participation by contractors should depend to a large extent on whether the research effort or results are likely to enhance the contractor's capability, expertise, or competitive position, and the value of such enhancement to the contractor.

(4) A contribution to either direct or indirect costs may constitute cost participation if such costs would otherwise be allowable, and the costs are not charged to the Government under any other contract or grant.

* * * * *

3. Section 35.007 is amended by revising paragraph (g) to read as follows:

35.007 Solicitations.

* * * * *

(g) The contracting officer should consider providing prospective offerors an opportunity to comment on the requirements, the contract schedule, and any related specifications if the effort is complex. This may be done through a preproposal conference (see 15.409) or draft solicitation (see 5.205(c)). The Government's estimate of the man years required to perform the project may be provided in the solicitation or during the preproposal conference.

* * * * *

4. Section 35.009 is amended by revising the fourth sentence and adding a fifth sentence to the existing paragraph to read as follows:

35.009 Subcontracting research and development effort.

* * * The clause at 52.244–2, Subcontracts (Cost-Reimbursement and Letter Contracts), prescribed for cost-reimbursement contracts at 44.204(b), requires the contractor to notify the contracting officer reasonably in advance of entering into certain subcontracts and to obtain the contracting officer's written consent before placing certain subcontracts that require advance notification. However, the contracting officer may ratify, in writing, any subcontract requiring consent.

5. Section 35.010 is revised to read as follows:

35.010 Scientific and technical reports.

(a) The clause at 52.235–4, Scientific or Technical Report Requirements, discussed at 35.018(c)(ii) requires contractors to furnish scientific and technical reports, as a record of the work accomplished under the contract. Contracting officers shall include in the contract the requirements for the report content. Content should be consistent with the objectives of the effort involved.

(b) Agencies should generally make R&D contract results available to other Government activities and the private sector (see 35.018(c)(ii)). Contracting officers shall follow agency regulations regarding such matters as national security, protection of data, and new-technology dissemination policy.

6. Section 35.018 is added to read as follows:

35.018 Contract clauses.

(a) The contracting officer shall insert a clause substantially the same as the clause at 52.235–1, Animal Welfare, in solicitations and contracts involving research on live vertebrate animals.

(b) The contracting officer shall insert the clause at 52.235–2, Frequency Authorization, in solicitations and contracts requiring the development, production, construction, testing, or operation of a device for which a radio frequency authorization is required.

(c) The contracting officer shall insert clauses substantially the same as the following in solicitations and contracts for research or development:

(1) The clause at 52.235–3, Acknowledgement of Support and Disclaimer;

(2) The clause at 52.235–4, Progress Reports; and

(3) The clause at 52.235–5, Final Scientific or Technical Report Requirements;

(d) The contracting officer shall insert the clause at 52.235–6, Dissemination of Project Results, in solicitations and contracts for research or development when it is anticipated. Award will be to an educational institution or nonprofit organization whose primary purpose is the conduct of scientific research.

PART 52—SOLICITATION PROVISIONS AND CONTRACT CLAUSES

7. Sections 52.235–xx through 52.235–xx are added to read as follows:

52.235–xx Animal Welfare.

As prescribed in 35.018(a), the contracting officer shall insert a clause substantially the same as the following:

Animal Welfare (XXX 1992)

(a) The Contractor shall register its research facility with the Secretary of Agriculture in accordance with 7 U.S.C. 2316, 9 CFR subpart C, and Section 2.30 and furnish evidence of such registration to the Contracting Officer prior to beginning work under this contract.

(b) The Contractor shall acquire animals only from a dealer licensed by the Secretary of Agriculture under 7 U.S.C. 2133 and 9 CFR subpart A sections 2.1 through 2.11 or from a source that is exempt from licensing under those sections.

(c) The Contractor agrees that the care and use of animals will conform with the pertinent laws of the United States and regulations of the Department of Agriculture (see 7 U.S.C. 2131 et seq. and 9 CFR subchapter A, parts 1 through 4.

(d) The Contractor may request registration of its facility and a current listing of licensed dealers from the Regional Office of the Animal and Plant Health Inspection Service (APHIS), USDA, for the region in which its research facility is located. The location of the appropriate APHIS Regional Office, as well as information concerning this program may be obtained by contacting the Senior Staff Officer, Animal Care Staff, USDA/PHIS, Federal Center Building, Hyattsville, MD 20782.

(e) This clause, including this paragraph (e), shall be included in all subcontracts involving research on live vertebrate animals.

(End of clause)

52.235–xx Frequency Authorization.

As prescribed in 35.018(b), insert the following clause:

Frequency Authorization (XXX 1992)

(a) The Contractor shall obtain authorization for radio frequencies required in support of this contract.

(b) The Contractor shall provide the technical operation characteristics of the proposed electromagnetic radiating device to the Contracting Officer during the initial planning, experimental, or developmental phase of contract performance for any experimental, developmental, or operational equipment for which the appropriate frequency allocation has not been made.

(c) The Contracting Officer shall furnish the procedures for obtaining radio frequency authorization.

(d) This clause, including this paragraph (d), shall be included in all subcontracts requiring the development, production, construction, testing, or operation of a device for which a radio frequency authorization is required.

(End of clause)

Alternate I (XXX 1992). Substitute the following paragraph (c) for paragraph (c) of the basic clause if the contract is awarded by the Department of Defense, or if agency procedures authorize use of DD Form 1494, Application for Frequency Application:

(c) The Contractor shall use DD Form 1494, Application for Frequency Application, to obtain radio frequency authorization.

52.235–xx Acknowledgement of Support and Disclaimer.

As prescribed in 35.018(c)(i), insert the following clause:

Acknowledgement of Support and Disclaimer (XXX 1990)

(a) If not required pursuant to the Rights in Data-General clause, an acknowledgement of the contracting agency's support must appear in the publication of any material, whether copyrighted or not, based on or

developed under this project, in the following terms:

This material is based upon work supported by the (name of contracting agency(ies)) under Contract No. (Contractor should enter the contracting agency(ies) contract number(s)).

(b) All materials, except scientific articles or papers published in scientific journals, must also contain the following disclaimer:

Any opinions, findings and conclusions or recommendations expressed in this publication are those of the author(s) and do not necessarily reflect the views of the (name of the contracting agency(ies)).
(End of clause)

52.235-xx Progress Reports.

As prescribed in 35.018(c)(ii), insert the following clause:

Progress Reports (XXX 1992)

(a) Progress reports shall include—
(1) A summary of overall progress, including results obtained to date and their relationship to the general goals of the contract;
(2) An indication of any current problems or favorable or unusual developments;
(3) A summary of work to be performed during the succeeding reporting period; and
(4) Other information pertinent to the type of project being supported.
(b) Frequency of progress reports: The Contractor shall, within 30 days after the end of each twelve-month period of performance, submit an original and two copies of an annual comprehensive report to coincide with each year of performance. The final report shall be accepted in lieu of the annual report during the final year of performance of this contract.
(End of clause)

52.235-xx Final Scientific or Technical Report Requirements.

As prescribed in 35.018(c)(iii), insert the following clause:

Final Scientific or Technical Report Requirements (XXX 1992)

(a) The Contractor shall prepare and submit to the Contracting Officer an original and two copies of the final scientific or technical report no later than the expiration date of the contract.
(b) The final scientific or technical report shall cover the entire period of performance. The contents of the final scientific or technical report shall be as specified elsewhere in this contract.
(c) If this is a Department of Defense (DOD) contract, the Contractor shall submit two copies of the approved scientific or technical report to the Defense Technical Information Center (DTIC), ATTN: DTIC-FDAC, Cameron Station, Alexandria, VA 22304-6145. DTIC provides a central service for the interchange of scientific and technical information of value to the DOD and its contractors. Each copy should contain a completed SF 298, Report Documentation Page. Information on the SF 298 can be obtained from the Defense Technical Information Center, ATTN: DTIC-HDB, Cameron Station, Alexandria, VA 22304-6145. If the SF 298 is not available, the bibliographic information can be supplied on a separate piece of paper. For submission of reports in other than paper copy, contact the Defense Technical Information Center, ATTN: DTIC-FDAC, Cameron Station, Alexandria, VA 22304-6145.
(d) If this is a non-DOD contract, the Contractor should submit eleven copies of the approved technical report to the National Technical Information Service (NTIS), 5285 Port Royal Road, Springfield, VA 22061.
(End of clause)

52.235-xx Dissemination of Project Results.

As prescribed in 35.018(d), insert the following clause:

Dissemination of Project Results (XXX 1992)

(a) The Contractor is expected to publish or otherwise make publicly available the results of the work under this contract unless specifically prohibited by this contract.
(b) At such time as any article resulting from work under this contract is published in a scientific, technical or professional journal or publication, two reprints of the publication should be sent to the Contracting Officer's Technical Representative, clearly labeled with the contract number and other appropriate identifying information.
(End of clause)

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Federal Register

Thursday
December 12, 1991

Part VI

Department of Education

Office of Vocational and Adult Education

Cooperative Demonstration Program (School-to-Work); Notice

DEPARTMENT OF EDUCATION

Office of Vocational and Adult Education

Cooperative Demonstration Program (School-to-Work)

AGENCY: Department of Education.

ACTION: Notice of proposed priority, required activities, selection criteria, and other requirements for grants to be made in fiscal year 1992.

SUMMARY: The Secretary proposes to establish a priority for a grant competition for awards to be made during fiscal year (FY) 1992 using a portion of the funds appropriated in FY 1991 under the Cooperative Demonstration Program, which is authorized by section 420A of the Carl D. Perkins Vocational and Applied Technology Education Act (Perkins Act). Under the proposed absolute priority, funds for the competition would be reserved for applications proposing to demonstrate examples of successful cooperation between the private sector and public agencies in vocational education to assist vocational education students in attaining the advanced level of skills needed to make the transition from schools to productive employment. The Secretary also proposes to impose requirements on projects funded under this competition and proposes to use new selection criteria in evaluating applications submitted for this competition.

DATES: Comments must be received on or before January 13, 1992.

ADDRESSES: All comments concerning this proposed priority should be addressed to Robert L. Miller, U.S. Department of Education, 400 Maryland Avenue, SW., room 4512, Switzer Building, Washington, DC 20202–7242.

FOR FURTHER INFORMATION CONTACT: Robert L. Miller. Telephone (202) 732–2428. Deaf and hearing impaired individuals may call the Federal Dual Party Relay Service at 1–800–877–8339 (in the Washington, DC 202 area code, telephone 708–9300) between 8 a.m. and 7 p.m., Eastern time.

SUPPLEMENTARY INFORMATION: The Cooperative Demonstration Program provides financial assistance for, among other things, projects that demonstrate examples of successful cooperation between the private sector and public agencies in vocational education. These projects also must demonstrate ways in which vocational education and the private sector of the economy can work together effectively to assist vocational education students to attain the advanced level of skills needed to make the transition from school to productive employment. This program activity is authorized by section 420A(a)(2) of the Carl D. Perkins Vocational and Applied Technology Education Act, as added by Public Law No. 101–392, 104 Stat. 753 (1990).

The Secretary wishes to highlight for potential applicants that this program can help further the purposes of AMERICA 2000, the President's education strategy to help America move itself toward the National Education Goals. Specifically, the program can contribute to the President's objective—as stated in Track III of the AMERICA 2000 strategy ("Transforming America into 'A Nation of Students' ")—of reviewing current Federal job training efforts and identifying successful ways of motivating and enabling individuals to receive the comprehensive services, education, and skills necessary to achieve economic independence. The "school-to-work" priority also directly supports National Education Goal 5—ensuring that every adult American will be literate and possess the knowledge and skills necessary to compete in a global economy and exercise the rights and responsibilities of citizenship.

Improving the quality of entry-level workers is a critical element in improving the overall quality of the national work force if American businesses are going to compete effectively in the world market place. Each year, almost half the students who leave high school enter the labor market directly. Many lack the academic and vocational skills needed to enter the work force. This lack of adequate preparation on the part of many American young people who are making the transition from school to work is a national concern. Compared to other countries, the United States devotes little attention to assisting youth in making the transition from school to work.

The Departments of Labor and Education have been exploring ways to facilitate this transition, and recently the Secretaries of Education and Labor co-sponsored a national conference, "The Quality Connection: Linking Education and Work." The conference identified four principles that should form the foundation for an American approach to strengthening the school-to-work connection—

(1) *Stay-in-school*: School-to-work programs should motivate youth to stay in school and become productive citizens.

(2) *High Standards*: School-to-work programs must enable youth to attain high academic achievement levels.

(3) *Linking Work and Learning*: School-to-work programs should link classroom curriculum to work-site experience and learning.

(4) *Employment and Careers*: School-to-work programs should lead to initial employment and a significant chance for continued employment and education growth.

The national conference developed five key school-to-work strategies necessary to strengthen the educational delivery system and provide it with the flexibility needed to train students to participate effectively in the work force:

(1) Strengthening the involvement of the private sector;

(2) Ensuring work-bound youth a range of choices in their career development;

(3) Establishing relevancy of work-connected learning to the educational setting;

(4) Agreeing on key characteristics of a model school-to-work transition program; and

(5) Establishing a system of accountability as part of the school-to-work transition efforts.

These strategies guide both the Department of Education's and the Department of Labor's efforts to improve the school-to-work transition, although the Departments are emphasizing somewhat different approaches. The Department of Labor is focusing its efforts on developing new program models that use work-based learning concepts as a central feature. It has funded demonstration and research efforts testing various approaches for integrating school-based learning and work-based learning.

The Department of Education proposes to focus on projects that will demonstrate proven elements of school-to-work transition efforts in a comprehensive system. These demonstration projects will provide evidence of the effectiveness of existing programs that can be summarized and submitted for review by the Department of Education's Program Effectiveness Panel. The two Departments believe that their efforts are complementary and will continue to coordinate their activities closely.

In addition, to maximize the benefits of these Federal demonstration dollars, the Secretary proposes to require that no Federal funds under this program be used to purchase or lease equipment. However, non-Federal funds used to acquire any necessary equipment can be

counted toward meeting the cost-sharing requirement for this program.

The Secretary will announce the final priority in a notice in the **Federal Register.** The final priority will be determined by responses to this notice, available funds, and other considerations of the Department. Funding of particular projects depends on the availability of funds, the nature of the final priority, and the quality of the applications received. The publication of this proposed priority does not preclude the Secretary from proposing additional priorities, subject to meeting applicable rulemaking requirements, nor does it limit the Secretary to funding only this priority.

Note: This notice of proposed priority does not solicit applications. A notice inviting applications under this competition will be published in the **Federal Register** concurrent with, or following publication of, the notice of final priority.

Priority

Under 34 CFR 75.105(c)(3), the Secretary proposes to give an absolute preference to applications that meet the following priority. The Secretary proposes to fund under this competition only projects that involve cooperation between vocational education and the private sector to help vocational education students attain the advanced level of skills they need to make the transition from school to productive employment by combining proven strategies into a single comprehensive system that can be demonstrated for the benefit of other localities. For the purposes of this competition, Federal funds for the three years should be used for evaluating, improving, demonstrating, and preparing for the submission of project results to the Program Effectiveness Panel. Federal funds may not be used for ongoing program operation costs.

Required Activities

(a) The Secretary further proposes to require that any project funded under this competition must include—

(1) An existing and successful school-to-work vocational education program conducted by the grantee involving strategies that have been demonstrated as outstanding as recognized by vocational education entities such as: State and local agencies, postsecondary educational institutions, institutes of higher education, and other public or private agencies, organizations, and institutions;

(2) Strategies that will bridge the school-to-work gap between what students are taught in school and what is needed on the job;

(3) Strong involvement of guidance counselors, local social service agencies, private sector agencies, organizations, and institutions, teachers, students, and parents;

(4) Active participation of employers planning the program and setting standards for performance;

(5) Student recruitment and assessment strategies;

(6) Curricula that integrate academic content with occupational competencies and that provide a coherent sequence of courses leading to certification of workplace skills that are recognized as necessary by employers;

(7) On-the-job training conducted by the private sector and integration of this training with classroom instruction;

(8) Support services and coordination of these services to provide meaningful career guidance to students in linking classroom learning to workplace skill requirements and to career development;

(9) Assessment of job-readiness skills of students that meet the requirements expressed by the private sector; and

(10) Job placement and follow-up services.

(b) The Secretary further proposes to require that projects not expend Federal funds received under this program for equipment, as defined in 34 CFR 74.132 and 34 CFR 90.32.

(c) The Secretary also proposes to impose the following requirements on projects funded under this competition.

(1) The projects funded under this competition must—

(i) Demonstrate to other localities the strategies employed by the project;

(ii) Disseminate information on the extent to which these strategies appear to be successful; and

(iii) Disseminate their results in a manner designed to improve the training of teachers, other instructional personnel, counselors, and administrators who are needed to carry out the purpose of the Perkins Act.

(Authority: 20 U.S.C. 2420a(d)).

(2) Each grantee shall provide, and budget for, an independent evaluation of grant activities. The evaluation must—

(i) Be both formative and summative in nature;

(ii) Be based on student achievement, completion, and placement rates; and

(iii) Provide a basis for the preparation of an application to the Department's Program Effectiveness Panel.

(Authority: 20 U.S.C. 2520a)

Criteria for Evaluating Applications

For this fiscal year 1992 grant competition under the Cooperative Demonstration Program (School-To-Work) only, the Secretary proposes to use the following selection criteria and to assign points to the selection criteria as indicated:

(a) *Program factors.* (30 points) The Secretary reviews the quality of the proposed project to assess the extent to which the project will—

(1) Demonstrate an existing and successful school-to-work vocational education program conducted by the applicant;

(2) Incorporate proven strategies for school-to-work transition into a single comprehensive system;

(3) Reflect in its design the use of evaluation data on student achievement and placement rates that show a successful transition of students to productive employment;

(4) Provide for an effective comprehensive school-to-work system that includes—

(i) Strong involvement of local social service agencies; private sector agencies, organizations, and institutions; teachers; guidance counselors; students; and parents;

(ii) Active participation of employers in program planning and setting standards for performance;

(iii) Student recruitment and assessment strategies;

(iv) Curricula that integrate academic content with occupational competencies and that provide a coherent sequence of courses leading to certification of workplace skills that are recognized as necessary by employers;

(v) On-the-job training conducted by the private sector and integration of this training with classroom instruction;

(vi) Support services and coordination of these services to provide meaningful career guidance to students in linking classroom learning to workplace skill requirements and to career development;

(vii) Assessment of readiness skill of students that meet the requirements expressed by the private sector; and

(viii) Job placement and follow-up services.

(b) *Plan of operation.* (15 points) The Secretary reviews each application to determine the quality of the plan of operation for the project, including

(1) The quality of the project design, especially the establishment of measurable objectives for the project that are based on the project's overall goals;

(2) The extent to which the plan of management is effective and ensures proper and efficient administration of the project over the award period;

(3) How well the objectives of the project relate to the purpose of the program;

(4) The quality of the applicant's plan to use its resources and personnel to achieve each objective; and

(5) How the applicant will ensure that project participants who are otherwise eligible to participate are selected without regard to race, color, national origin, gender age, or disability.

(c) *Evaluation plan.* (20 points) The Secretary reviews each application to determine the quality of the project's evaluation plan, including the extent to which the plan—

(1) Is clearly explained and is appropriate to the project;

(2) To the extent possible, is objective and will produce data that are quantifiable;

(3) Identifies expected outcomes of the participants and how those outcomes will be measured;

(4) Includes activities during the formative stages of the project to help assess and improve the project, as well as a summative evaluation that includes recommendations for replicating project activities and results;

(5) Will provide a comparison between intended and observed results, and lead to the demonstration of a clear link between the observed results and the specific treatment of project participants; and

(6) Will yield results that can be summarized and submitted to the Secretary for review by the Department's Program Effectiveness Panel as described in CFR 34 parts 786 and 787.

(d) *Demonstration and dissemination.* (20 points) The Secretary reviews each application for information to determine the effectiveness and efficiency of the plan for demonstrating and disseminating information about project activities and results throughout the project period, including—

(1) High quality in the design of the demonstration and dissemination plan and procedures for evaluating the effectiveness of the dissemination plan;

(2) Identification of target groups and provisions for publicizing the project at the local, State, and national levels by conducting or delivering presentations at conferences, workshops, and other professional meetings and by preparing materials for journal articles, newsletters, and brochures;

(3) Provisions for demonstrating the methods and techniques used by the project to others interested in replicating these methods and techniques, such as inviting interested persons to observe project activities;

(4) A description of the types of materials the applicant plans to make available to help others replicate project activities and the methods for making the materials available; and

(5) Provisions for assisting others to adopt and successfully implement the project or methods and techniques used by the project.

(e) *Key personnel.* (5 points)

(1) The Secretary reviews each application to determine the quality of key personnel the applicant plans to use on the project, including—

(i) The qualifications, in relation to project requirements, of the project director;

(ii) The qualifications, in relation to project requirements, of each of the other key personnel to be used in the project;

(iii) The appropriateness of the time that each person referred to in paragraphs (e)(1) (i) and (ii) will commit to the project; and

(iv) How the applicant, as part of its nondiscriminatory employment practices, will ensure that its personnel are selected for employment without regard to race, color, national origin, gender, age, or disability.

(2) To determine personnel qualifications under paragraphs (e)(1) (i) and (ii), the Secretary considers—

(i) Experience and training in project management and in fields related to the objectives of the project; and

(ii) Any other qualifications that pertain to the quality of the project.

(f) *Budget and cost effectiveness.* (5 points) The Secretary reviews each application to determine the extent to which the budget—

(1) Is cost effective and adequate to support the project activities;

(2) Contains costs that are reasonable and necessary in relation to the objectives of the project; and

(3) Proposes using non-Federal resources available from appropriate employment, training, and education agencies in the State to provide project services and activities and to acquire project equipment and facilities.

(g) *Adequacy of resources and commitment.* (5 points)

(1) The Secretary reviews each application to determine the extent to which the applicant plans to devote adequate resources to the project. The Secretary considers the extent to which the—

(i) Facilities that the applicant plans to use are adequate; and

(iii) Equipment and supplies that the applicant plans to use are adequate.

(2) The Secretary reviews each application to determine the commitment to the project, including whether the—

(i) Uses of non-Federal resources are adequate to provide project services and activities, especially resources of the private sector, and State and local educational agencies; and

(ii) Applicant has the capacity to continue, expand, and build upon the project when Federal assistance ends.

Paperwork Reduction Act of 1980

This priority contains information collection requirements. As required by the Paperwork Reduction Act of 1980, the Department of Education will submit a copy of the proposed priority to the Office of Management and Budget (OMB) for its review. (44 U.S.C. 3504(h)).

This priority would affect the following types of entities eligible to apply for a grant under this program: State educational agencies, local educational agencies, postsecondary educational institutions, institutions of higher education, and other public or private non-profit agencies, institutions, or organizations. The Secretary needs and uses the information to determine whether proposed projects are likely to meet identified national needs. The annual public reporting burden for the collection of information is estimated to average 90 hrs per response for 80 respondents, including the time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information.

Organizations and individuals desiring to submit comments on the information collection requirements should direct them to the Office of Information and Regulatory Affairs, room 3002, New Executive Office building, Washington, DC 20503, Attention: Daniel J. Chenok.

Intergovernmental Review

This program is subject to the requirements of Executive Order 12372 and the regulations in 34 CFR part 79. The objective of the Executive order is to foster an intergovernmental partnership and a strengthened federalism by relying on processes developed by State and local governments for coordination and review of proposed Federal financial assistance.

In accordance with the order, this document is intended to provide early notification of the Department's specific plans and actions of this program.

Invitation to Comment

Interested persons are invited to submit comments and recommendations regarding (a) this proposed absolute priority and required activities and (b) these proposed selection criteria.

All comments submitted in response to this notice will be available for public inspection, during and after the comment period, in room 4512 Switzer Building, 330 C Street, SW., Washington, DC, between the hours of 8:30 a.m. and 4 p.m., Monday through Friday of each week except Federal holidays.

Program Authority: 20 U.S.C. 2420a.

(Catalog of Federal Domestic Assistance Number 84.199E Cooperative Demonstration Program)

Dated: September 25, 1991.

Lamar Alexander,

Secretary of Education.

[FR Doc. 91-29668 Filed 12-11-91, 8:45 am]

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Thursday
December 12, 1991

Part VII

Department of Housing and Urban Development

Office of the Assistant Secretary

Guidelines for Determining Appraisals of Preservation Value; Notice

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

Office of the Assistant Secretary for Housing—Federal Housing Commissioner

[Docket No. N-91-3307; FR-3074-N-01]

RIN 2502-AF45

Guidelines for Determining Appraisals of Preservation Value Under the Low-Income Housing Preservation and Resident Homeownership Act of 1990

AGENCY: Office of the Assistant Secretary for Housing—Federal Housing Commissioner, HUD.

ACTION: Notice and request for public comment.

SUMMARY: On May 2, 1991 the Department published a proposed rule entitled "Payment of a HUD-Insured Mortgage by an Owner of Low Income Housing." In conjunction with this proposed rule, HUD has developed written Appraisal Guidelines for the determination of preservation values for such housing. The purpose of this Notice is to afford opportunity for public comment which HUD will take into consideration in developing the final Appraisal Guidelines.

DATES: Comment due date: January 13, 1992.

ADDRESSES: Submit written comments to the Office of the General Counsel, Rules Docket Clerk, room 10276, Department of Housing and Urban Development, 451 Seventh Street, SW., Washington, DC 20410. Communications should refer to the above docket number and title. A copy of each communication submitted will be available for public inspection and copying during regular business hours (7:30 a.m. and 5:30 p.m.) at the above address.

FOR FURTHER INFORMATION CONTACT: Edward M. Winiarski, Chief, Valuation Branch, Office of Insured Multifamily Development, Department of Housing and Urban Development, 451 Seventh Street, SW., Washington, DC 20410. Telephone, voice (202) 708-0624; TDD (202) 708-4594. (These are not toll-free numbers.)

SUPPLEMENTARY INFORMATION: Title VI of the Cranston-Gonzalez National Affordable Housing Act, Public Law 101-625, enacted November 28, 1990, contains the Low Income Housing Preservation and Resident Homeownership Act of 1990 (the "1990 Act").

The 1990 Act provides the Secretary of HUD with permanent authority to deal with HUD-assisted multifamily projects where owners have the option of prepaying their mortgage loans. Its basic objectives are to assure that most of the "prepayment" inventory of HUD-assisted housing remains affordable to low income households and to provide opportunities for tenants to become homeowners, while at the same time fairly compensating owners for the value of their properties in the Federal Register on May 2, 1991 under the title "Prepayment of a HUD-Insured Mortgage by an Owner of Low Income Housing" (56 FR 20262). The Department provided for a 60-day period after the publication of the proposed rule for the submission of public comments (until July 1, 1991). The Department is currently making every effort, taking into account all public comments (including comments on these guidelines), to publish an interim or final rule in the very near future.

A portion of the proposed rule consists of provisions (§ 248.111—Appraisal and Preservation Value of Eligible Low Income Housing) which seek to implement section 213 of the 1990 Act by establishing the procedure for appraising eligible low income housing for which the owner has submitted a notice of intent to transfer the project or to extend its low income affordability restrictions. Two appraisals must be conducted within the four months following submission of such a notice of intent. Both the owner and the Secretary shall retain an independent appraiser to conduct an appraisal of the property. Both appraisers shall possess the same minimum qualifications, to be established by the Department, to determine the project's extension and transfer preservation values. If the appraisals yield different preservation values, the proposed rule establishes a one month period during which the owner and Secretary will attempt to reach agreement as to the project's preservation values based on the results from both appraisals. If agreement cannot be reached within the one month period, the owner and the Secretary must jointly select a third appraiser whose determination of preservation values shall be binding on both parties.

As a part of this process, section 213(c) of the statute requires that HUD develop written guidelines for the appraisals of preservation value. In its entirety, section 213(c) reads as follows:

(c) GUIDELINES.—The Secretary shall provide written guidelines for appraisals of preservation value, which shall assume repayment of the existing federally assisted mortgage, termination of the existing low-income affordability restrictions, and costs of compliance with any State or local laws of general applicability. The guidelines may permit reliance upon assessments of rehabilitation needs and other conversion costs determined by an appropriate State agency, as determined by the Secretary. The guidelines shall instruct the appraiser to use the greater of actual project operating expenses at the time of the appraisal (based on the average of the actual project operating expenses during the preceding 3 years) or projected operating expenses after conversion in determining preservation value. The guidelines established by the Secretary shall not be inconsistent with customary appraisal standards. The guidelines shall also meet the following requirements:

(1) RESIDENTIAL RENTAL VALUE.—In the case of preservation value determined under subsection (b)(1) [extension of low-income affordability], the guidelines shall assume conversion of the housing to market-rate rental housing and shall establish methods for (A) determining rehabilitation expenditures that would be necessary to bring the housing up to quality standards required to attract and sustain a market-rate tenancy upon conversion, and (B) assessing other costs that the owner could reasonably be expected to incur if the owner converted the property to market-rate multifamily rental housing.

(2) HIGHEST AND BEST USE VALUE.—In the case of preservation value determined under subsection (b)(2) [transfer of the property], the guidelines shall assume conversion of the housing to highest and best use for property and shall establish methods for (A) determining any rehabilitation expenditures that would be necessary to convert the housing to such use, and (B) assessing other costs that the owner could reasonably be expected to incur if the owner converted the property to its highest and best use.

Written Guidelines have been prepared by the Department in compliance with the above quoted section 213(c) of the 1990 Act. The Department expects all appraisals will be in conformance with the Uniform Standards of Professional Appraisal Practice ("USPAP") except as modified by these Appraisal Guidelines, which are permitted as "Supplemental Standards" under USPAP. Due to time constraints, they were not published initially in conjunction with the May 2 proposed rule. The purpose of this Notice is to publish these draft Appraisal Guidelines in the Federal Register in order to provide an opportunity for comment by the public upon them—which comments the Department will take into account in its development of final Guidelines.

Procedural Matters

Executive Order 12606, The Family

The General Counsel, as the Designated Official under Executive Order 12606, The Family, has determined that this issuance would not

have potential for significant impact on family formation, maintenance, and general well-being, and, thus, is not subject to review under the Order. The Guidelines would be used as an adjunct to regulations implementing the Low Income Housing and Resident Homeownership Act of 1990—legislation designed to preserve and enhance housing opportunities for lower income families.

Executive Order 12612, Federalism

The General Counsel, as the Designated Official under section 6(a) of Executive Order 12612, Federalism, has determined that the policies contained in these Guidelines will not have federalism implications when implemented and, this, are not subject to review under the Order. These Guidelines do not change in any way existing relationships between HUD, the States, or local governments.

Semiannual Agenda

This document was listed as item number 1411 on the Semiannual Agenda of Regulations published on October 21, 1991 (56 FR 53380, 53410).

Accordingly, public comment is invited on the draft Appraisal Guidelines immediately following this notice. To be considered, comments must be received within the period 30 days following the publication date of this Notice.

Dated: November 7, 1991.

Arthur J. Hill,

Assistant Secretary for Housing-Federal Housing Commissioner.

Appraisal Rules and Guidelines; Low Income Housing Preservation and Resident Homeownership Act of 1990

1. Overview

A. Background

In the late 1960's and early 1970's several thousand low-income multifamily projects were built with mortgages insured or assisted under sections 221(d)(3) and 236 of the National Housing Act. Over the next 15 years, limited dividend sponsors of 360,000 units of this housing stock will become eligible to prepay their mortgage loans and convert their properties to market rate housing or other purposes. This eligibility stems from the terms of the mortgage note signed at the loan closing and the applicable program regulations in effect at the time the properties were built; owners were allowed to prepay their 40-year mortgages without HUD's consent after 20 years. The majority of the eligible projects were built in the early 1970's, so most of the 20 year prepayment prohibition terms will be expiring in the near future.

Considerable concern has been raised about owners exercising their option to prepay the mortgages because this action has the effect of terminating the HUD-imposed affordability restrictions which ensure that the project is maintained for very low, low- and moderate-income tenants. In response to this concern, Congress enacted legislation in 1987 that placed constraints on an owner's right of prepayment and created incentives either to encourage owners to retain the low-income affordability restrictions in exchange for receiving a greater return on their investment or to transfer the property to purchasers who would agree to retain the low-income affordability restrictions.

The 1987 legislation was intended to be a temporary measure until a permanent program for the preservation of the housing was developed. The Low-Income Housing Preservation and Resident Homeownership Act of 1990 (LIHPRHA) provides permanent authority to deal with HUD-assisted projects where owners have the option of prepaying their mortgage loans. Under LIHPRHA, the basic objectives are to assure that most of the "prepayment" inventory remains affordable to low-income households and to provide opportunities for tenants to become homeowners, while at the same time fairly compensating owners for the value of their properties. The 1990 Act provides authority under very specific and limited circumstances for owners to prepay their mortgages.

B. Preservation Process

The preservation process begins under the 1990 Act when an owner of a project eligible to prepay its mortgage files a Notice of Intent. Appraisals are required if an owner requests incentives in exchange for extending low-income affordability restrictions or seeks to sell the project to a purchaser who will agree to extend the low-income affordability restrictions. The one category of purchaser to which the extension of low-income affordability does not apply is resident councils who are purchasing the property for conversion to homeownership. The appraisals' estimate of value will be the basis of any incentives for an owner seeking to retain a project and establish the maximum sale price for an owner seeking to sell a project. Accordingly, the owner and HUD will separately hire independent appraisers to determine the project's "as-is" values.

In the case of an owner seeking to retain a project, the basis of any incentives is an appraisal of a project's extension preservation value; *i.e.*, its fair market value as unsubsidized market rate multifamily rental housing less all repair and conversion costs needed to achieve the net income used in the analysis.

In the case of an owner seeking to sell a project, the maximum sales price will be the project's transfer preservation value; *i.e.*, its fair market value at its highest and best use less all costs related to the conversion to its highest and best use.

Thus, both the extension and transfer preservation values measure the "as-is" value of the property rather than the potential value of the property fixed up.

Since owners have the option of modifying their initial decision and seeking to sell their project rather than requesting incentives and vice versa, each appraiser will be required to determine both the project's extension preservation value and its transfer preservation value. It is expected that in many cases a property will not have a higher and better use than unsubsidized market rate residential rental property.

The value determination(s) prepared by each appraiser will be reviewed by HUD and the owner. HUD expects that it will be able to reach agreement with the owner regarding the extension and transfer preservation values, if the Department's review determines that the difference between the appraisals is no more than five percent of the lower amount. If the difference between the appraisals cannot be reconciled, a third appraiser will be jointly hired and compensated by HUD and the owner.

C. Appraisal Time Frames and Review

The appraisers must submit their appraisals within 4 months after the date of the owner's notice of intent. Their reports will be subject to review and consultation by HUD staff and the owner, if needed. Amendments resulting from the review and consultation may also be requested. The appraiser shall maintain the appraisal and its records for a period of 5 years. The review will address appraisal deficiencies such as inadequate support for conclusions, lack of adherence to these guidelines, inconsistencies, etc. The third appraiser will have 2 months to complete the assignment. The third report will be reviewed by both HUD and the owner, and will be binding on both HUD and the owner as long as there are no inconsistencies or other deficiencies, and the conclusions are adequately

supported and it adheres to these guidelines.

2. Documentation To Be Furnished to the Appraisers

The HUD valuation staff will verify in every case that the HUD contract appraiser, owner's appraiser or third appraiser, if required, is not the subject of a charge issued following a reasonable cause determination under the Fair Housing Act. After verification of the appraiser's civil rights status, the HUD valuation staff will provide the appraiser with the first page of Form HUD–92013, Application—Project Mortgage Insurance (which provides a basic description of the property), the last 3 years' financial statements of the subject project, HUD's required repair work write-up (see section 5. B. infra), a determination as to whether the subject property has been designated a "Historic Site" (see section 4. A. infra), a set of plans, if available, and the name of an owner's contact person who will provide access to the property.

The appraisers shall present their written reports in the standard narrative format (Ninth Edition, The Appraisal of Real Estate (AIREA), Pages 578 through 592). Due to the nature of the program it is anticipated that, of the three approaches to value, the income approach will have the heaviest weight in the correlation of value. The appraiser shall transcribe conclusions of extension preservation value determinations on Form HUD–92264, Rental Housing Project Income Analysis and Appraisal, Sections A–F, K–L and O (a copy of form and instructions on its completion will be furnished to the appraiser at time of assignment). Additionally, the rental and expense analyses shall be performed on Forms HUD–92273, Estimates of Market Rent by Comparison, and Form HUD–92274, Operating Expense Analysis Worksheet respectively. (These forms and their instructions will also be furnished). Estimates must be based on comparable market data. Any paucity of data must be addressed and fully documented as part of the appraisal report.

3. Definitions of Preservation Value

a. Extension preservation value is the Fair Market Value of the housing based on the property's highest and best use as an unsubsidized market-rate multifamily rental property; and

b. Transfer preservation value is the Fair Market Value of the housing based on the property's highest and best use.

Both values will reflect the deduction of all improvement, repair and conversion costs.

The Extension and Transfer Preservation Value determinations will reflect the following:

- Existing Federal low-income restrictions have been removed (with the exception of section 8 contracts which will still be in effect during the conversion period). However environmental and historic preservation requirements will remain intact;
- Repayment of the existing assisted mortgage(s) has been accomplished;
- The plan of conversion complies with prevailing laws and relevant requirements (State and local);
- The value will reflect an amount that will permit a return expected in the market by a knowledgeable entrepreneur typically participating in such undertakings;
- An analysis and estimate of the costs associated with the repair and conversion to highest and best use and as market rate rental housing; and
- The value will be as of the effective date of the appraisal.

4. Additional Appraisal Assumptions

A. Properties with Non-Federal Use Agreements or Historic Preservation Requirements

In some cases, the appraisals will be affected by the presence of an underlying project-specific use agreement other than the HUD program under which the property is insured or assisted. In some cases, these project-specific agreements may be vague and, therefore, must be carefully analyzed. For example, a typical non-HUD agreement accompanying a tax abatement might include only general reference to continued use of the property for low- and moderate-income tenants. This could be for a 40 year term, or by inference, continued use in a manner consistent with the housing program under which the project was originally financed by a State or local housing agency. It is the appraiser's responsibility as part of the appraisal assignment, to explore whether the property has any such use agreements. The appraisals should be based on the assumption that the project-based use restriction would allow rent and income eligibility to rise to the maximum levels allowed by the non-HUD requirements.

Properties that are designated as Historic Sites or in the process of being designated as Historic Sites must meet certain requirements such as keeping the exterior of the structures as originally constructed. HUD will inform the appraisers if a particular property falls into this category very early in the process by providing a determination as such at the assignment of the case. The appraisal report must discuss these requirements to the extent necessary to determine the impact on market value, and cost of compliance, if any.

B. Properties Subject to Rent Control

The appraisals will be affected by the requirements of rent control, if applicable. For these properties, the impact of the ordinance on a particular property is complex and could be affected by a number of project-specific factors such as:

1. The level of rehabilitation planned (possible grounds for application of full exemption from ordinance);

2. Number of units that have been voluntarily vacated (ability to increase rents for such units); and

3. Any other rent control requirements peculiar to the subject locality and property.

It is the appraiser's responsibility to explore fully and reflect the effect rent control would have on the unsubsidized value in establishing the assumptions for the appraisals for a specific property. The appraiser is also responsible for justifying the assumptions for the property regarding Rent Control. Such assumptions must be supported by all necessary data.

In summary, the objective of this appraisal is to approximate the value that the unregulated property would command in the market place in the absence of any State or Federal participation, but not excluding legal requirements such as rent control.

5. Extension Preservation Value

In estimating the extension preservation value, the appraiser must assume that the property will be rehabilitated to a market quality standard through improvements that will enable it to attract and sustain the assumed unsubsidized market rate tenancy upon conversion, with rental estimates used to support that assumption commensurate with what that user group would be willing to pay. In this connection, the appraiser will need to assess:

A. The Improvements Necessary To Bring the Property Up to a Quality Standard Needed To Attract the Assumed Unsubsidized Market Rate Tenants

(This is over and above the repairs and costs to restore the project that may be required by the HUD work write-up (see 5.B. below)).

These improvements can be characterized as hypothetical since they would be considered only for the purpose of estimating the Extension

Preservation Value and would not in all likelihood occur. The appraiser shall develop a list of these improvements and their associated cost.

Following is a partial list of upgrading items, as an example, that could be required to attract unsubsidized market occupancy:

1. Common area carpeting and upgrading;
2. Renovation of kitchens and bathrooms to a greater extent than for subsidized housing;
3. Addition of swimming pool, hot-tub, exercise room, sauna, etc;
4. Upgraded landscaping;
5. Upgraded appliances;
6. Upgraded exterior refurbishing;
7. Addition of dishwashers, washers and dryers in units;
8. All other upgrading required to support the market rents used in the appraisal; and
9. Energy saving conservation measures such as;

(a) In most cases, individual metering of utilities;

(b) Double pane windows.

The importance of adequately defining and estimating the cost of these improvements cannot be overstated. The appraiser, in particular, must provide adequate support for the cost of these upgrading improvements. The appraiser will include in his or her estimate of cost for those items of improvement which are upgrades of existing improvement (*i.e.*, appliances, landscaping) only the difference in cost between the upgrade and the existing improvement. The appraiser may receive assistance, aside from his/her own data sources, from the appropriate State agency, as determined by the Secretary. Contact the local HUD Office for the appropriate State agency.

B. The Repairs Needed To Restore the Project Back to its Original Physical Standards for Occupancy

Original physical standards for occupancy does not mean that the project will be returned to an "as new" or mint condition, but will be in good condition and meet local codes and the Housing Quality Standards as outlined in 24 CFR 886.113. We wish to note that lead-based paint (see 24 CFR part 35) removal is part of 24 CFR 886.113. In addition, asbestos removal requirements (refer to EPA/OSHA standards and requirements) will be enforced.

Additionally, section 504 of the Rehabilitation Act of 1973 and its implementing regulations at 24 CFR 8.23 will require the owner, depending on the extent of the project repairs and alterations, to make all altered elements readily accessible to and usable by individuals with handicaps until five percent of the units are readily accessible to and usable by such individuals, and if substantial alterations are needed, an additional two percent of the units shall be made accessible for persons with hearing or vision impairments. Also, alterations to common areas or parts of facilities that affect accessibility shall, to the maximum extent feasible, be made accessible to and usable by individuals with handicaps.

Thirty days after the Notice of Intent HUD will provide these appraisal guidelines to its appraiser and the owner with a date for a joint inspection of the property for the purpose of determining the required repairs/rehabilitation and their cost in conjunction with the capital need assessment. This will also include an analysis of the adequacy of the project's reserve for replacement account. The owner will forward to his or her appraiser the guidelines along with the inspection date. In addition to HUD's A&E staff or contractor conducting the inspection, the following will also be invited:

1. Owner or Owner's Representative
2. Tenant Representative (if identified)
3. HUD's Loan Management staff
4. Local Code Enforcement body
5. Both Appraisers or their Representatives

The project's tenants association, resident council, tenants, or tenants' representative may provide any input they wish up to the date of inspection. HUD will provide to the appraisers within 60 days of the notice of intent the list of required repairs/rehab and their cost.

The appraisers, in determining the extension preservation value will have to subtract the upgrading improvements cost and the required repairs to bring the housing's present condition up to the quality standard required to attract market rate tenancy.

C. Conversion Period

The preservation properties will be occupied by a mix of households of very low income (Incomes at or below 50 percent of median income for the area), low-income (Incomes above 50 percent and up to 80 percent of median income for the area) and moderate income (Incomes above 80 percent and up to 95 percent of the median income for the area). Location and economic conditions may inhibit attracting unsubsidized market tenants. Consequently, any prospective buyer or present owner of the property would face obstacles and uncertainties in attempting to shift to unsubsidized market use. The extent of these uncertainties is most evident under a condominium conversion scenario, but is also clearly present in a scenario that proposes a substantial increase in tenant rents.

These factors will both reduce conversion revenues and add costs, especially during the conversion period—the period during which the property is phased from restricted use to market use. The factors that must be documented in the appraisal include the following:

1. *Conversion period revenues.* (a) Estimated unit turnover including moveouts by lower income tenants unable to pay the market prices of the conversion plan, and followed by occupancy of market-rate households;

(b) Estimated prevailing unsubsidized market rents;

(c) Estimated absorption rates over time for rent-up;

(d) Estimated number of units which will still be under a section 8 contract; and

(e) Estimated revenue projections for units that will continue to have occupancy during the conversion period (including an estimate plan for phase-in of rent increases for tenants expected to remain in the property during conversion).

2. *Conversion period costs (other than upgrading or required repairs).* (a) Estimated income loss due to vacancy from start of repairs to point of reaching sustaining occupancy;

(b) Estimated legal costs (e.g., evictions, etc.);

(c) Estimated relocation costs required by local law;

(d) Estimated increased maintenance and repair costs under the assumption that increased tenant concern, complaints and loss of goodwill will occur due to their potential relocation or eviction;

(e) Estimated financing costs of the new loan to pay off the present mortgage including debt service during the remodeling period until the housing reaches sustaining occupancy;

(f) Estimated increase (initial deposit) to the Reserve for Replacements Account to cover any shortfall caused by the depreciated portion of short-lived items not being replaced as part of the repair program, e.g., 10-year old electric ranges that do not warrant replacement, but have used a significant part of their useful life; and

(g) Estimated Marketing Program;

(1) Leasing personnel;

(2) Model units; and

(3) Advertising.

(h) Entrepreneurial Profit and Risk Analysis;

These revenue/cost assumptions for the conversion period will vary by property in accordance with project characteristics such as:

- Differential between current project rents and prevailing market rents;
- Income distribution of current tenants (e.g., greater ease of conversion in properties with large percentage of moderate vs low income tenants);
- Degree of disruption due to substantial rehabilitation of occupied units with additional costs of phasing and on-site/off-site relocation; and
- Degree of potential market resistance associated with converting a project that has been occupied by subsidized tenants for many years to an unsubsidized occupancy.

It is expected that the net effect of the revenues and costs during the conversion period could represent a significant adjustment in the determination of the extension preservation value of the property which, as was noted in the overview, is the as-is value of the property based on the assumption that the highest and best use of the property is as unsubsidized market rate multifamily rental.

For reemphasis, the appraisers will be required to subtract these conversion costs related to renting the housing units to an unsubsidized, market rate tenancy, in addition to all the repair costs, in their determination of the extension preservation value. Also, the assumed income group must be realistic relative to the location and type of the subject project. Aside from the appraisers' own sources, the appraisers may place reliance upon the assessment of conversion costs determined by the appropriate State agency, if such agency has been approved by the Secretary.

D. Operating Expense Estimate

In estimating the operating expenses when the highest and best use is as an unsubsidized, market-rate multifamily rental project, the appraiser must use the greater of actual project operating expenses at the time of the appraisal (based on the average of the actual project operating expenses during the preceding 3 years) or the estimated operating expenses after conversion, assuming a typical long-term operation as market rate housing.

(Note: HUD will provide the last 3 years of financial statements).

If the most recent year reflects higher expenses than the preceding years and the appraiser expects the expenses not to decrease, the most recent year should be used instead of the average of the 3 years in comparison with the estimated operating expenses after conversion. Conversely, if the most recent year reflects lower expenses and the appraiser expects the expenses not to increase either due to energy efficiencies or rehabilitation, the most recent year expenses will be used in comparison with the estimated operating expenses after conversion and the higher of the estimate or the most recent year's expenses will be used.

In both expense estimates, an annual reserve for replacements amount for major components shall be included. This annual payment amount should not be confused with the initial deposit to the reserve to bring it up to an amount needed to adequately reflect the already used-up portion of the short lived items. This initial deposit will be reflected as one of the conversion costs. (See 5–C–2–(f)) The existing annual reserve amount must be increased to reflect an additional amount associated with any repairs or improvement. This additional annual amount will be computed as .006 of the hard cost of such repairs.

The actual project operating expenses should be reviewed carefully to eliminate extraordinary and nonrecurring expenses. Items which are extraordinarily low or high should also be identified. For example, an identity of interest management fee (*i.e.*, where the owner is managing the property), if other than market, should not be used.

The operating expense estimate shall reflect the unsubsidized market nature of the tenancy. For example, a doorman salary could be in the expense estimate for a conversion to market tenancy but not in the expense estimate assuming subsidized occupancy.

E. Specific Guidelines

1. In all the approaches to value, the appraiser must assure that all the repair costs along with the conversion costs have been properly reflected.

2. A capitalization rate based on market data is required.

3. In the comparison approach to value, at least two approaches must be used. Gross Income Multiplier (GIM) or Effective Gross Income Multiplier (EGIM) must be one of them.

4. In an income producing property, normally in the correlation of value, more weight will be given to the capitalization approach. Any capitalization method that employs a discounted cash flow approach is not acceptable to the Department. It is the Department's position that projecting income and expenses into future time frames, for example, 5, 10 or 12 years out into the future, may be appropriate for investment counseling but is too uncertain for assessing underwriting risk. (The Department specifically invites public comment on its taking this position with respect to the unified cash flow approach.)

5. A market supported occupancy rate, not to exceed 93 percent shall be used in the appraisal.

6. Transfer Preservation Value

The transfer preservation value is based on the property's Highest and Best Use Other than Unsubsidized Market Rate Rental. The value is based on an assumed conversion of the housing to its highest and best use, reflecting all rehabilitation expenditures that would be necessary to convert to such use, and properly assessing and reflecting all other costs (conversion) that the owner could reasonably be expected to incur if the owner converted the property to its highest and best use.

If the highest and best use is as a market rate rental multifamily project, a transfer preservation value is not required since that value would have been determined under 5 above. However, the appraiser must address that consideration in the report.

Factors to be documented in determining the amount of revenues during the conversion period are as follows:

- Estimated prevailing market rent or condominium unit prices;
- Estimated absorption rates for vacant condominium units; and
- Estimated absorption rates for commercial or other non-residential use, if applicable.

In addition to the conversion costs listed under 5–C–2, the following must be documented by the appraiser:

- Estimates of marketing and sales costs (e.g. commissions, model units, advertising);
- Estimates of legal costs, (e.g. condominium documents);
- Estimates costs of Capital and Financing fees; and
- Estimated required rate of entrepreneurial return or profit on sales commensurate with the risk and effort associated with such a venture.

A. Highest and Best Use Determination

A narrative sufficient to document the appraiser's determination of Highest and Best Use must be developed. The appraiser must be able to demonstrate that the Highest and Best Use can meet the following criteria if it is other than its present use:

1. That it is physically possible;
2. That it is legally permissible;
3. That it is financially feasible and;
4. Maximally Productive.

Since these properties are all improved with multifamily rental

structures, the appraiser must also consider, as discussed under the extension preservation value, the improvements and required repairs or demolition and conversion costs to arrive at the highest and best use, as appropriate.

B. Highest and Best Use—Cooperative, Condominium or a Non Residential Use

1. *Cooperative.* A cooperative building is owned by a nonprofit corporation or trust in which each owner of stock pays a proportionate share of operating expenses and debt service on the underlying mortgage, which is paid by the corporation. This share is based on the proportion of the total stock owned, representing the proportionate value of a single apartment unit. Each owner also has, by proprietary lease, the right to occupy a particular apartment.

The members of a cooperative have the common purpose of acquiring housing at the most competitive cost, with savings shared by members. The best measure of this competitive acquisition price for conversion to cooperative use is its "as-is" value for use as an unsubsidized market rate rental property. HUD's existing procedure for underwriting conversions to cooperative use recognizes this and establishes the "as is" value of the property to be converted as a rental property using unsubsidized rents. Since this would be based on the supply of other market rate rental properties, the "as is" value for conversion to cooperative use will be its "as is" value for conversion to use as an unsubsidized market rate rental property.

2. *Condominium.* Instead of developing a market rate rent, the appraiser will develop values for each unit based on sales prices of comparable units in the marketplace. The Uniform Residential Appraisal Report (URAR) will be used to develop the value for each unit type and size. The appraiser will develop a sales price estimate for each unit reflecting its type, size, location or any other discernible differences to which the market will react.

The total costs of conversion, repairs and entrepreneurial return must be subtracted from the total unit values to arrive at the transfer preservation value, assuming a condominium use.

Repair costs must reflect both the required repairs and upgrading repairs in concert with the needs of the proposed condominium purchaser.

C. Non-Residential Use

If non-residential use is determined to be the highest and best use, all costs of repairs and conversion, including holding cost and profit, must be subtracted from the estimated market value for that use to determine the transfer preservation value based on that use.

7. Relevant Local Market Study

In every case, the HUD contract appraiser (not the owner's appraiser or third appraiser, if required) will prepare a rental study on Forms HUD–92273, Estimates of Market Rent by Comparison indicating the prevailing unsubsidized rents for the relevant local market area ("Market Area" is defined to be a geographic area in which alternative, similar properties effectively compete with the subject properties in the minds of probable, potential purchasers and users. Such an area shall be smaller than a market area established by the Commissioner for purposes of determining the section 8 existing fair market rent). These unsubsidized rents will assist HUD in its determination of the prevailing rents in the Relevant Local Market in connection with matters unrelated to the appraisers' value determination.

In this rent study, the unsubsidized rent comparables used must come from the subject relevant local market area, or if comparables are not found, a similar market area having the same demographic and market characteristics in which properties would effectively compete with the subject property in the minds of probable, potential users.

The rent required will be gross rents, that is, rents that include all utilities regardless of who is paying the utilities directly. The comparable rents presented on the Form HUD–92273 must be adjusted to reflect inclusion of utilities and services not included in the reported rent and it shall properly reflect differences in the heating and cooling systems between the subject and comparables.

In a nonmetropolitan area, if there is a lack of comparable unsubsidized multifamily projects in the same geographic locality, the appraiser may use comparables from noncontiguous localities as long as they are in the same county or parish and have similar demographic and market characteristics. If there are no comparables in the relevant local market area or noncontiguous areas, the appraiser will so document in the report.

In a nonmetropolitan or metropolitan area, if there is a lack of comparables of certain unit type(s) (e.g. for market rate four bedroom units) the appraiser may either make adjustments by extrapolation to the three bedroom comparables or provide his/her rationale and documentation for developing the market rent for the unit type.

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S. 272/Pub. L. 102-194

High-Performance Computing Act of 1991. (Dec. 9, 1991; 105 Stat. 1594; 11 pages) Price: $1.00

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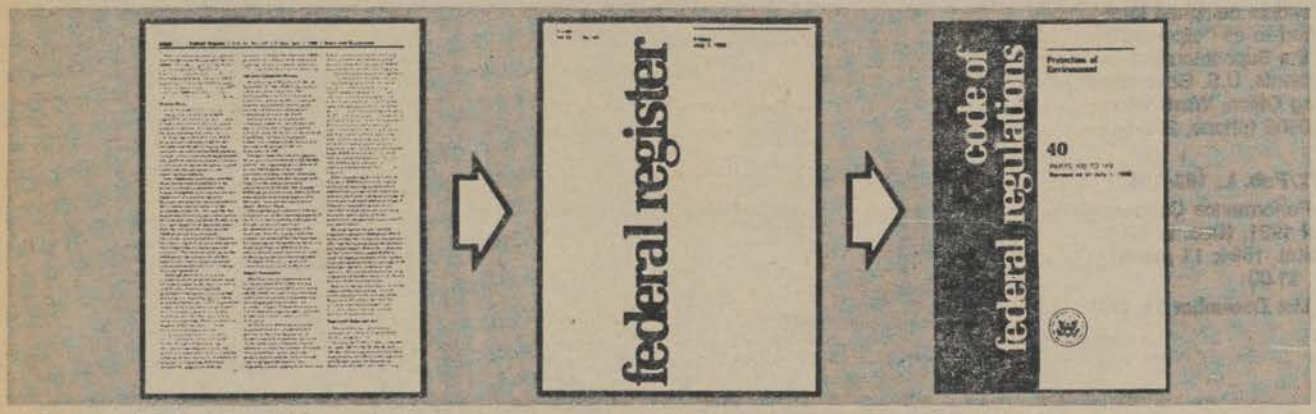

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